

Table of Contents

Introduction

- Do you suspect there may be environmental hazards in your neighborhood?

Part 1

What are some of the things you need to know to help you get involved in protecting your neighborhood environment?

- Would you like to know how to become involved in environmentally-related issues in your neighborhood?
- What government agencies have authority over environmental issues?
- What is IDEM (the Indiana Department of Environmental Management), and what does it regulate?
- Under what authority does IDEM regulate these activities?
 - Regarding federal authority
 - Regarding state authority
- What is the difference between rules and laws?
- Laws; where can you find them?
 - Regarding federal laws
 - Regarding state laws
- Rules (and regulations); where can you find them?
 - Regarding federal regulations
 - Regarding state rules
- Now that you know where to find copies of state and federal laws, rules, and regulations, how do you use them to find what you need?
- Does IDEM have other materials that may be helpful to you as you work to participate in processes which could affect your neighborhood environment?

Part 2

Who makes Indiana's environmental rules, and what is the rulemaking process?

- Who makes our state environmental rules?
- Who are the members of the state environmental boards?
- Who proposes rules to the boards?
- When do the environmental boards generally meet?
- What is the process associated with making environmental rules, and what are the opportunities for public participation within that process?
- What are the exceptions regarding the opportunity for public participation in the rulemaking process (described immediately above)?
- What other useful information should you remember about the rulemaking process?
- What determines when a public comment period (associated with a permit, variance request, rulemaking, or other IDEM decision) or an appeal period, officially begins and ends?
- What is the *Indiana Register*, and what public notice information might it contain regarding rulemaking efforts by IDEM and the environmental boards?
- How can you view a copy of the *Indiana Register*?

Part 3

How does IDEM help to protect your neighborhood and environment?

- What types of activities does IDEM regulate?
- What are facilities and sources?
- What tools does IDEM use to do its job; protecting the environment?
- What are permits?
- What is meant by Compliance?
- When and how does IDEM undertake enforcement action?

- What other tools does IDEM have at its disposal to help protect the environment?

Part 4

A General Summary of the Public Participation Process

What types of opportunities do you have either to 1) learn that someone is seeking to engage in an activity which could affect the environment and which therefore requires an environmental permit or 2) let IDEM know your thoughts or concerns regarding an environmentally-related decision?

- What types of environmentally-related activities regulated by IDEM include opportunities for you to get involved in the decision making process?
- What types of permits does IDEM issue?

General Permits

- What are “general permits,” and how do they protect the environment?
- What types of activities are regulated by “general permits”?
- What are your opportunities for public participation when someone is seeking a general permit which could be located in your neighborhood?
- What is the public notice process for “general permits”?

Individual Permits

- What is the overall process IDEM follows to issue an individual environmental permit?
- Should you be notified if a new facility or source, which will be engaged in activities which could affect the environment, is proposing to locate on the property right next door to you? (Or if a facility or source already located right next-door to you is proposing to expand?)
- When or how are your local officials involved?
- What is a public notice?
- Where are public notices posted?

- What information is included in a public notice?
- What is a “public comment period”?
- What types of comments are accepted during a public comment period?
- What generally happens at a public meeting?
- How does a public hearing differ from a public meeting?
- Who is notified of IDEM’s final decision to issue or deny a permit or other approval?
- What if you do not agree with IDEM’s final decision? How can you file an appeal?

Part 5

How do each of the various different IDEM environmental permitting programs work?

- Who needs an environmental permit?
- Why is it that the IDEM environmental permitting programs have to be so different from each other?
- What are the specific public notice requirements and opportunities for public participation for EACH of the various permits issued by IDEM?

Air Permits

What types of air permits are there?

- How are permits issued to potential sources of air pollution (possibly in your neighborhood), and how can you participate in the permitting process?
- What is the “variance” process for open burning, and how can you participate in the decision making process which allows such variances?

Water Permits

How are permits issued to wastewater discharges, and how can you participate in the permitting process?

- How are wastewater facility construction permits issued to persons constructing sewer lines or municipal (sanitary) or industrial wastewater pollution control equipment (possibly in your neighborhood), and how can you participate in the permitting process?
- How are permits issued to facilities which may discharge wastewater (and pollutants) into the water (possibly in your neighborhood), and how can you participate in the permitting process?

General NPDES (National Pollutant Discharge Elimination System) Permits

Individual NPDES Permits

Variances, Site-specific limits, and altered mixing zone requests

Antidegradation

- How are permits issued for the construction of drinking water facilities, and how can you participate in the permitting process?

General Permits

Individual Permits

Public Notice Regarding Certification of Demonstration of Capacity

- What is IDEM's role in regulating construction in a wetland, and what opportunities exist for public participation?

Waste Disposal Permits

Solid Waste Permits:

What types of permits are issued (possibly in you neighborhood) to recycling centers, transfer stations, landfills, incinerators and other facilities used to dispose of garbage and other solid wastes?

The types of solid waste disposal permits issued by the IDEM OLQ include:

Solid Waste Land Disposal Facilities:

Municipal Solid Waste Landfills (MSWLFs)

Construction/Demolition Debris Landfills (C/D Landfills)

Restricted Waste Sites (RWS); Types I, II, or III

Solid Waste Processing Facilities:

Municipal Solid Waste Processing Facility – Municipal Solid Waste Incinerator

Municipal Solid Waste Processing Facility – Transfer Stations or Recycling Center Types

Modifications to Land Disposal or Waste Processing Facilities:

Major Modification to a Solid Waste Disposal Facility

Minor Modification to a Solid Waste Disposal Facility

How can you participate in the process when IDEM is considering issuing a permit for a solid waste landfill or incinerator, or a major modification to such a facility?

How can you participate in the process when IDEM is considering issuing a minor permit modification to an existing solid waste incinerator or land disposal facility, a major or minor modification to an existing transfer station, or a permit for air emissions from a municipal solid waste land fill?

How can you participate in the process when IDEM is considering issuing a permit to a transfer station (including those with an associated recycling center)?

Other Types of Solid Waste Permits or Approvals Issued by OLQ

- What other types of permits are issued by the IDEM OLQ for handling, processing, treating, re-using, or disposing of non-hazardous solid waste?
- How can you participate in the process when IDEM is considering issuing permit to land apply or market certain biodegradable sludges or biosolids?
- How can you participate in the process when IDEM is considering issuing permit to land apply sanitary wastewater from septic systems or portable sanitary units?
- How can you participate in the process when IDEM is considering issuing approvals for confined animal feeding operations?
- How can you participate in the process when IDEM is considering issuing approvals for a waste tire processing facility?

Hazardous Waste Permits

- Does everyone generating or handling hazardous waste need a permit?
Hazardous Waste Generators
- How are permits issued to facilities for the treatment, storage or disposal of hazardous wastes, and how can you participate in the permitting process?

What is the pre-application public participation process required for “new” or “significantly changed” (existing) hazardous waste facilities permits?

Hazardous Waste Permits; General Public Notice Information

What is the public notice process, and what are the opportunities for public participation associated with hazardous waste permitting?

What is the public notice process, and what are the opportunities for public participation associated with changes (permit modification) to existing hazardous waste permits?

Class 3 Modifications

Class 2 Modifications

Class 1 Modifications

Temporary Modification Authorizations

Part 6

What opportunities exist for participating in the IDEM decision making process associated with environmental cleanups?

Federal Cleanups:

- What is the public participation process associated with Superfund (CERCLA) cleanups?
- What is the public participation process associated with the Defense Environmental Restoration Fund program?
- What is the public participation process associated with the Natural Resource Damage Program?

State Cleanups:

- How is the State Environmental Cleanup Program organized? (Including the cleanup of sites on the Commissioner's Bulletin, as well as state remedial cleanups and immediate removals.)
- What are your opportunities for participation in the State Cleanup Program?

RCRA Corrective Action:

- What is the RCRA (Resource Conservation and Recovery Act) Corrective Action process, and to what types of facilities does it apply?
- What opportunities exist for public participation in the RCRA Corrective Action Process?

- How is the RCRA Correction Action process concluded?

The Indiana Voluntary Remediation Program:

- What is the Voluntary Remediation Program, and how does it work?
- What are your opportunities for public participation once a facility has opted to conduct a cleanup within the Voluntary Remediation Program?
- What are the steps associated with completing a Voluntary Remediation Program cleanup?

Leaking Underground Storage Tanks and Brownfields:

- How is the IDEM Leaking Underground Storage Tank cleanup program implemented?
- What are the opportunities for public participation associated with the IDEM Leaking Underground Storage Tank cleanup program?
- How is an IDEM Brownfield Environmental Assessment implemented, and what are the opportunities for public comment associated with that type of service/assistance?

Drafts for Parts 1 through 6 (approximately 90 typed pages) have been completed, and Part 7 is partially completed. Parts 8 and 9 have not yet been drafted.

Part 7

What are the specific public notice requirements and opportunities for public participation for other, non-rulemaking/non-permit/non-cleanup related, activities carried out by IDEM?

- Will you be notified if the drinking water you obtain from a public water supplier (as opposed to drinking water from an on-site private well, or other private source) does not meet the Safe Drinking Water Act standards? What kind of notice can you expect?
- What are the public notice processes associated with the Hazardous Waste Facility Siting Board?

- What are the public notice processes associated with reclassification of attainment/non-attainment areas for air criteria pollutants?

Part 8

What are the environmental issues over which IDEM has no authority?

- What agency has authority over strong odors?
- What agency has authority over weed-killers, pesticides, and similar chemical substances?
- What agency has authority over publicly owned lands?
- What agency has authority over nuclear energy?
- What agencies have authority over Indiana streams and rivers?
- What agency has authority over septic systems (including septic tanks)?
- What agencies have authority over trucks hauling hazardous materials?
- What agency has authority over freon gas, and other chemical substances which could affect the earth's ozone layer?
- Etc.....

IDEM Environmental Justice Citizen's Guide

Introduction

Do you suspect there may be environmental hazards in your neighborhood?

Have you ever worried about what might be coming out of the pipe that dumps into your neighborhood creek? Have you wondered what the smoke stack at the other end of the block might be putting into your air? Are you curious about whether the operation next door is legally allowed to do what it does? Did a factory near you seem to suddenly get twice as big? Did you oppose this expansion, but not know where to turn?

Many businesses want to be good neighbors, and are happy to share information with their neighbors. But that is not always the case. Similarly, government agencies don't always get it right when it comes to providing you with the information you need, and have a right to have. If you are trying to get answers, but are being ignored, or feel like you aren't getting the whole story, or are being made to feel like it "isn't any of your business," IDEM, the Indiana Department of Environmental Management, wants you to know: *It is your business!*

Part 1

What are some of the things you need to know to help you get involved in protecting your neighborhood environment?

Would you like to know how to become involved in environmentally-related issues in your neighborhood?

Because you have a right to know about activities that could affect the environment within your neighborhood, IDEM has put this information together to help you find the answers you need. Like all citizens, you have a right to know what's going on. And if you know what, where, and how to ask for the information you need, you will be more successful at getting it. You also may be more successful at changing the manner in which a proposed project or activity that you feel may have an impact on you, your family, and neighbors, will be carried out. It all starts with understanding the process; knowing how our government is organized, and how our environmental laws and rules are made and enforced.

What government agencies have authority over environmental issues?

When people in Indiana have a question or a complaint about the environment, many contact IDEM.

However, while we do have authority over many environmentally-related issues, we are not the only governmental agency to have a say in what many folks would consider “environmental matters.” There also are numerous federal agencies and other state agencies with authority over environmental matters within Indiana; such as the U.S. Environmental Protection Agency, the Indiana Department of Natural Resources, the State Department of Health, or the State Chemist’s Office. In addition, there are several local-level agencies (like your county health department) that also have authority over environmentally-related matters.

Lets take a closer look at these various levels of authority, beginning with IDEM.

What is IDEM (the Indiana Department of Environmental Management), and what does it regulate?

IDEM was established by the Indiana General Assembly in 1986. It is the state agency charged with regulating certain activities that could impact human health or the environment. IDEM regulates these activities in the manner that is described both in state environmental laws and, in even greater detail, in state environmental rules. (Who makes these rules, and how they differ from laws, is discussed on [pages 4-6](#).)

Generally speaking, IDEM is empowered by state environmental laws and rules to regulate:

- 1) Pollutants emitted into the air,
 - From smokestacks, from evaporation (as from storage containers or facilities, or coating drying processes), from open burning, or from some dust sources, (In addition, in Lake, Porter, Clark, and Floyd counties IDEM also regulates emissions from cars, trucks and buses because those counties do not currently meet air standards for ozone.)
 - The construction or installation of site-specific devices that emit pollutants into the air, as well as the construction of pollution control devices
- 2) Pollutants discharged into the waters of Indiana (including Lake Michigan and the Ohio and Wabash Rivers),
 - Any discharge of sanitary wastewater (from homes and public restroom facilities) or industrial wastewater (including process wastewater, cooling water, or certain stormwater runoff) flowing from a point source (such as a pipe or trench) onto the ground (where it may percolate into the soil or groundwater) or into virtually any stream, pond, or a lake
 - The construction of any water treatment control facility or related collection system (sewer)
- 3) Maintenance of water quality from the impacts of dredging and similar other discharge-related activities,
- 4) The proper processing or disposal of solid wastes (which may be a solid, a liquid, or contained gas)

- 5) The proper storage, treatment or disposal of hazardous waste (Hazardous waste includes solid waste or a combination of solid wastes that because of its quantity, concentration, physical, or chemical characteristics may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment.),
- 6) The proper handling, storage, and shipment off-site of hazardous wastes from facilities generating such wastes,
- 7) The disposal of certain bio-solids (sludge) or sanitary wastewater (from septic systems or portable toilets) that is treated and applied directly onto land as a soil enhancement,
- 8) The cleanup, or the supervision of the cleanup, of land or water contaminated by the improper disposal, or accidental release, of solid or hazardous waste,
- 9) Chemical and petroleum storage tanks,
- 10) Activities involving the removal of asbestos or lead-based paint
- 11) The construction of public water supply facilities,
- 12) Overseeing the state program to protect the groundwater quality of public well fields, and
- 13) The monitoring of public water supplies to ensure they are safe.

To learn about how IDEM protects the environment, see Parts 2, 3, 4, and 5 of this guide, pages ____ [9] through ____ [60+].

At first glance, the above list appears to be a fairly long. However, there are many other environmentally-related matters over which IDEM has no authority. Those other matters are further discussed in Part 6 of this guide, beginning on page ____ [60ish].

Under what authority does IDEM regulate these activities?

IDEM is empowered by both federal and state government.

Regarding Federal Authority:

Although federal environmental laws enacted by Congress and signed by the President generally empower the U.S. EPA (Environmental Protection Agency) to regulate activities that could impact the environment, EPA often delegates its authority to the individual states. For example, IDEM is empowered by the EPA to enforce the federal Clean Air Act and the Clean Water Act.

IDEM issues permits to various commercial and industrial facilities or sources that limit the air emissions or wastewater discharges from these facilities. IDEM inspectors then visit these facilities to ensure they are operating in the manner allowed by their permits. When facilities or sources fail to operate under limits allowed by their permits, or fail to quickly return to permitted operating limits and conditions, IDEM can respond by ordering them to return to their allowable operating limits and conditions. IDEM also can impose fines on those facilities or sources that violate their permits or fail to quickly return their operations back within permit limits.

Laws; where can you find them?

Regarding Federal Laws

Many environmentally-related matters are governed by federal law, which is listed in the United States Code. However, since most such matters are addressed by the state, acting on behalf of the U.S. EPA, you will seldom need to refer to the U.S. Code while participating in the public process associated with environmentally-related decision making.

The U.S. Code is very large. If you do need to refer to it, keep in mind that not all libraries in Indiana are likely to have a copy. However, there are thirty-six (36) libraries throughout Indiana – such as the State Library, located just across the street from the west front of the Indiana Statehouse, in Indianapolis – that have been designated by the U.S. Government as federal book depositories. The U.S. Code (federal laws) and the U.S. Code of Federal Regulations (CFR) are among the federal publications available to the public at each federal book depository. Indiana's thirty-six (36) federal book depositories include various university libraries, as well as public libraries in some of Indiana's larger metropolitan areas. For a complete listing of federal book depositories in Indiana, please check the appendix found on **page 1**, in the back of this publication, or look on the Internet at: <http://www.statelib.lib.in.us/W/RL/FEDDOC.html>

For those persons who cannot easily visit a federal book depository, nearly all libraries in Indiana provide free public access to the Internet, where the U.S. Code is available at: http://www.access.gpo.gov/su_docs/aces/aces140.html or at: <http://www.gpo.gov/congress/cong013.html>. If you are unfamiliar with how to use a computer, or the Internet, you can ask a reference librarian for assistance. You also may view and copy relevant environmentally-related portions of the U. S. Code by visiting the Office of Legal Counsel library at Room 1315, Indiana Government Center North, 100 N. Senate Avenue, Indianapolis, Indiana.

Regarding State Laws

All Indiana laws are listed in the Indiana Code (IC). It is made up of 36 separate “titles”, and is published in 12 volumes, plus accompanying indexes and supplements. Many libraries in Indiana have a copy of the Indiana Code. It also can be found on the Internet at <http://www.state.in.us/legislative/ic/code/> from where it may be viewed, and selected sections may be printed out. Again, nearly all libraries in Indiana have Internet access. If you are unfamiliar with how to use computers, or the Internet, ask a librarian for assistance.

Rules (and regulations); where can you find them?

As already mentioned, both the federal and state governments make rules.

Regarding Federal Regulations

The federal government calls its rules “regulations”. All federal regulations are listed in the Code of Federal Regulations, often referred to as the CFR. The CFR is huge. Its fifty (50) separate “titles” include every detail about how to carry out and enforce all federal laws. For example; title 7 covers agriculture, title 10 energy. Title 36 deals with parks and forests, while title 43 covers other public lands. Title 50 is wildlife and fisheries.

Title 40, “Protection of the Environment” is where most laws enforced by IDEM are listed. It is a virtual encyclopedia of environmental regulation; requiring 24 volumes to include all its “parts”, which run from Part 1 through Part 799, plus Part 1500 through Part 1516. The regulations on hazardous wastes alone extend from Part 260 through Part 299; they are more than 1100 pages long, and make up volumes 18 and 19 of Title 40.

However, despite its large size, the CFR is organized in such a way as to help users find what they are looking for. The other “good news” about using the CFR is that you usually won’t have to use it, because most of the environmental rules that must be followed in Indiana (even the rules to meet federal requirements) are instead listed in the Indiana Administrative Code, which is discussed below. For example, the standards and requirements derived from the U.S. Clean Water Act and U.S. Clean Air act are explained in detail in the state environmental rules.

Nonetheless, there are instances when the state simply incorporates federal regulations into state rules; that is, the federal regulations also serve as the state rules. In those instances, if you want to look at the state rules, you must look in the federal regulations. For example, the state rules for regulating facilities that generate, handle, treat, store, or dispose of hazardous waste, and for regulating the cleanup of releases of hazardous waste or hazardous constituents into the environment are explained in detail in the federal regulations. (More information on using the CFR can be found on page ____.)

Not all libraries are likely to house a full set of the Code of Federal Regulations. However, certain libraries in Indiana, such as the Indiana University Library in Bloomington have been designated as federal book depositories, and will have a complete copy of the CFR (for a list of such libraries in Indiana, see page ____). In addition, all libraries in Indiana do have Internet access that would enable you to visit The U.S. National Archives and Records Administration webpage (<http://www.access.gpo.gov/nara/cfr/>) from which you can find and print out specific portions of the CFR. If you are unfamiliar with how to use computers, or the Internet, you can ask a librarian for assistance.

Regarding State Rules

Just as federal rules are all listed in the CFR, all the rules that accompany and clarify state laws are listed in the Indiana Administrative Code, which is not nearly as large as the CFR. Although the Indiana Administrative Code (or IAC) has 158 separate “titles” that run non-consecutively from Title 10 to Title 930, many of those “titles” are only a few pages long. In fact, the entire IAC of state rules is listed in 12 volumes, as compared to 24 volumes of federal regulations just on environmental protection.

The state rules that regulate air pollution are in Title 326, while the rules for drinking water and for discharges of wastewater are in Title 327. Title 329 includes the state rules on waste disposal.

Sidebar:

However, please note that rather than developing separate state rules for regulating facilities that generate, handle, treat, store, or dispose of hazardous waste, or to regulate the cleanup releases of hazardous waste or hazardous constituents into the environment, Indiana has opted to incorporate existing federal rules into state rules; meaning the federal rules are – almost word-for-word – the state rules. As mentioned above, the federal hazardous waste rules (which, by incorporation, are also the state rules) are found in Title 40 of the CFR, Parts 260 through 299.

Many libraries in Indiana are likely to have a copy of the Indiana Administrative Code. All libraries in Indiana also have Internet access, which you can use to view or print out portions of the IAC. The Indiana Administrative Code can be found on the Internet at: <http://www.state.in.us/legislative/iac/>.

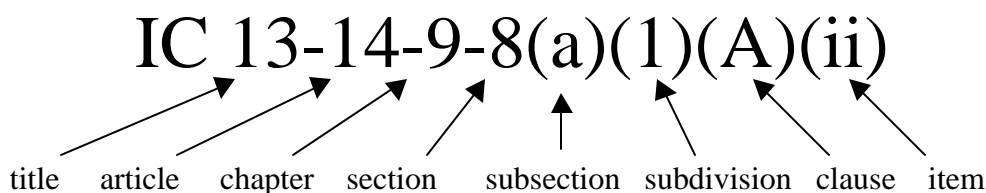
Now that you know where to find copies of state and federal laws, rules, and regulations, how do you use them to find what you need?

Right. You know where to find copies of the U.S. Code, the CFR (Code of Federal Regulations), the Indiana Code and the Indiana Administrative Code. But they each are so large. How do you use them to find the few pages you may need?

Try to think of it this way. To reference a specific quote from Shakespeare, a person would name the play, the act, the scene, and sometimes even the line, where the quote can be found. Similarly, people sometimes quote the Bible, the Torah, or the Koran using the name of the book and the chapter and verse numbers where the particular quote can be found. Just think of state or federal law, rule, and regulation code books in the same way. Nearly every sentence, or at least every paragraph, has its own sequence of identifying numbers and letters. Much of the time you will find that when you are participating in the public process related to environmental decision making, public announcements and other related documents will frequently list the exact identifying sequence of numbers and letters you need. If you wish to review the laws or rules affecting the process, you can simply use the sequence listed in the document to look it up.

Similarly, each of these sets of law or code books is like an encyclopedia; they are large, they have lots of information, and they have a table of contents and an index. If you don't know the particular sequence you need to find what you are looking for, you also can search for it using the index or table of contents. In addition, if the code books are on the Internet you also may be able to search for them using key words. Again, all libraries in Indiana have Internet access. And if you don't know much about computers, or the Internet, ask a librarian to help you.

For example, the scheme for labeling, or being able to find, a specific law in the Indiana Code (IC) is as follows:



Similarly, the scheme for labeling, or being able to find, a specific rule in the Indiana Administrative Code (IAC) is as follows:

327 IAC 5-3-4.1(b)(2)(B)(ii)(GG)(aa)

↑ ↑ ↑ ↑ ↑ ↑ ↑ ↑ ↑
title article rule section subsection subdivision clause item subclause subitem

Does IDEM have other materials available that may be helpful to you as you work to participate in processes that could affect your neighborhood environment?

- Fact Sheets – most public notices for permits, environmental-cleanups, rulemakings, etc. (also available as hand outs at public meetings?)
- Contact Persons – most public notice processes list a contact person, along with a phone number at which that person may be contacted
- The IDEM Permit Guide – available on the internet (Again, nearly all libraries in Indiana provide free public access to the Internet. If you are unfamiliar with how to use a computer, or the Internet, you can ask a reference librarian for assistance. The pages of the IDEM Permit Guide also can easily be printed from the Internet.)
- Policy Documents – Sometimes referred to as “non-rule policy documents,” these “how to” guidance documents explaining how various rules, standards, or requirements can be met. These policy, or guidance, documents are available by way of: 1) the internet (where they can be viewed or printed), or 2) telephone request (through the fax-on-demand program which allows users who have access to a fax machine to call 800/726-8000, select documents of interest from a menu, “order” the document number using a “touch-tone” phone, and have that document faxed to them). Policy or guidance documents also can be obtained by contacting the appropriate program area by calling , or 3) by requesting to receive the document in the mail by calling our toll free number at 800/451-6027 (in state calls only) or 317/232-8603.
- The IDEM File Room – Located in the Indiana Government Center North, at 100 N. Senate Avenue, in Indianapolis (just west of the statehouse), where you can view permits, enforcement orders, and many other public records. (For more information on the contents of the IDEM file room, see [page 11](#) of this guide. You may telephone the file room at (800) 451-6027.

Part 2

Who makes Indiana's environmental rules, and what is the rulemaking process?

Who makes our state environmental rules?

While state environmental laws are enacted by the State Legislature, and then signed into law by the Governor, state environmental rules (to further clarify environmental laws) are adopted by state environmental boards.

State law has created four state boards that formally adopt the rules to help carry out the environmental laws. The *Air Pollution Control Board* adopts rules governing air pollution, the *Water Pollution Control Board* adopts rules to regulate water pollution, and the *Solid Waste Management Board* adopts rules governing the cleanup or disposal of solid waste, which can include hazardous waste. Similarly, the *Underground Storage Tank Financial Assurance Board* adopts rules to administer the Underground Storage Tank Excess Liability Trust Fund. (The fund, which is generated by annual fees from underground storage tank owners, is used to help those same registered tank owners to defray cleanup costs, if a tank they own develops a leak.)

Who are the members of the state environmental boards?

The state air, water, and waste management environmental boards each include three (3) “ex-officio” members; the Lt. Governor, the Commissioner of the State Department of Health, the Director of the Indiana Department of Natural Resources (or persons they chose to appear on their behalf). Each of these three (3) boards also has eight (8) citizen members appointed by the Governor, and representing various interests including: manufacturing, industry, agriculture, small business, local government, environmental groups, a medical doctor, and a member of the general public. The Solid Waste Management Board has two (2) additional members, one (1) who represents the solid waste management industry and one (1) who represents the solid waste management districts. The Governor’s appointees must be evenly divided between political parties, and each board member serves a term of four (4) years.

The Underground Storage Tank Financial Assurance Board has sixteen (16) members including the Commissioner of IDEM, the State Fire Marshall, the State Treasurer, and the Commissioner of the Indiana Department of Revenue, plus twelve (12) persons representing various interests who are also appointed by the Governor. Members of this board serve terms of two (2) years each.

Who proposes rules to the boards?

The IDEM proposes “draft rules” to the various environmental boards for their approval. These “draft rules” are based on IDEM’s interpretation of state and federal laws. Any rules proposed by IDEM must be adopted by the appropriate board prior to becoming effective.

In addition, citizens with a petition signed by at least two hundred (200) persons can request that the board consider engaging in a rulemaking. If the board determines that the subject of such a rulemaking is not plainly devoid of merit and does not deal with a subject on which the board held a hearing during the past six months, the board shall give notice and hold a hearing. The board will then consider the hearing officer's findings and vote to proceed with a rulemaking on the subject, or to go no further.

When do the environmental boards generally meet?

State law requires that the Air Pollution Control Board, Water Pollution Control Board, and Solid Waste Management Boards meet a minimum of six (6) times each year. On average, they each meet about nine (9) or ten (10) times per year. The Underground Storage Tank Financial Assurance Board usually meets quarterly (about every three (3) months).

Generally, the Air Pollution Control Board meets on the first Wednesday of each month, the Water Pollution Control Board meets on the second Wednesday of each month, and the Solid Waste Management Board meets on the third Tuesday of each month. Generally, each of the three boards meets at the Indiana Government Center South (just west of the statehouse), at 402 West Washington, in Indianapolis. Generally, the meeting begin a 1:00 or 1:30 in the afternoon.

However, meeting dates can vary so if you are interested in attending a board meeting you are strongly urged to first check with the appropriate board scheduler at the phone number list below:

Air Pollution Control Board	317/233-0426
Solid Waste Management Board	317/232-7995
Water Pollution Control Board	317/233-8903
Underground Storage Tank Financial Assurance Board	317)234-0341

You also can view listings for current board membership, review minutes from past board meetings, or obtain agendas and upcoming board meeting information packets by visiting the IDEM web site on the Internet (Most public libraries provide free Internet access.). Agendas and board meeting information packets generally are available on the Internet two weeks prior to scheduled meetings. The web addresses of the various environmental boards are:

Air Pollution Control Board	http://www.IN.gov/idem/oam/programs/rules/apcb/packets/
Solid Waste Management Board	http://www.in.gov/idem/olq/regulations_and_laws/swmb.html
Water Pollution Control Board	http://www.IN.gov/idem/water/planbr/rules/wpcbmeetings.html

Underground Storage Tank Financial Assurance Board

http://www.in.gov/idem/olq/regulations_and_laws/3-20FABmeeting/march01agenda.html or

http://www.in.gov/idem/olq/programs/eltf/pdf/fab_members.pdf

Environmental board meetings are also posted on the IDEM calendar page at:

http://www.state.in.us/serv/eventcal?PF=idem&Clist=16_153_154_155_156.

Individuals wishing to attend a board meeting who require reasonable accommodations for participation in the event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue, P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-4200 or (317) 232-6565 (TTD). Please provide a minimum notification of seventy-two (72) hours.

What is the process associated with making environmental rules, and what are the opportunities for public participation within that process?

Sidebar:

Rulemaking procedures for IDEM can be found in the Indiana Code (statutes) at IC 13-14-9, sections 1-13.

First, IDEM announces in the Indiana Register, under the section titled “IC 13-14-9 Notices,” that it is planning to write (or modify) a rule on a specific subject. No rule language is published as part of this “first notice.” Instead, the initial Indiana Register announcement of a rulemaking action must: 1) identify the authority under which the rule is to be adopted (and also state which environmental board will be considering the new rule), 2) describe the subject matter and basic purpose of the rule, 3) describe the existing statutory or regulatory requirements to be addressed by the rule, 4) request alternative suggestions for achieving the purposes of the rule, and 5) announce a public comment period of at least thirty (30) days during which any person may submit comments and/or suggestions for specific language for the rule.

After the public comment period has ended, IDEM will review and respond in writing to all the comments that were received. These comments and responses are included in the second public notice.

The second public notice also will appear in the Indiana Register under the section titled “IC 13-14-9 Notices.” “Draft” rules appearing in that section of the Indiana Register will be grouped according to, and identified in the table of contents by, the name of the sponsoring board. The second public notice must: 1) contain the full text of the draft rule, 2) contain a summary of IDEM’s written responses to the comments and suggested language received during the first comment period, 3) announce a second public comment period of at least thirty (30) days during which any person may submit comments and/or suggestions for specific amendments to the language contained in the draft rule, and 4) announce that the board will hold a public hearing on the rule, at which interested persons may submit written or oral comments. If the draft rule would modify an already existing rule, the text of that existing rule which would appear in the notice would denote new language being proposed to be inserted into the rule as **bold text**, and would denote existing language being proposed to be removed from the rule by using ~~striketrough text~~.

The two (2) public hearings required as part of the rulemaking public participation process, may be conducted as free-standing events, although such hearings usually are held as part of a board meeting (of either the Air Pollution Control Board, Water Pollution Control Board, Solid Waste Management Board, or Underground Storage Tank Financial Assurance Board). The hearings should be conducted in an informal manner that allows the orderly presentation of comments, while avoiding repetition. The hearings provide opportunity for any person to submit written, or oral, facts and comments. The board may opt to recess a hearing, and begin it anew at a different date, time, and/or location (such as at a later board meeting), as long as the date, time, and location for re-convening (re-starting) the hearing is announced before the hearing is recessed, and also is included as part of the official hearing record. All comments at any rulemaking-related hearing must be recorded.

After the close of the second public comment period, the board will hold the hearing announced as part of the second public notice on the “draft” rule. If, after the hearing on the draft rule, the board still wishes to move forward with the rule, it may preliminarily adopt the rule. At that point, the draft rule is thereafter referred to as the preliminarily adopted rule, or the proposed rule. If the language of the proposed rule is not substantively (significantly) different from the language of the draft rule that appeared in the second public notice in the Indiana Register, there will not be another public comment period. On the other hand, if portions of the proposed, or preliminarily adopted, rule differ substantively (significantly) from the draft rule that appeared in the second public notice, then IDEM must publish a third public notice. That notice, which will appear in the Indiana Register under the section titled “Proposed Rules,” will announce a third public comment period for a minimum of twenty-one (21) days, during which IDEM will accept comments and/or suggested language concerning only that portion of the rule that differs substantively from the language contained in the draft rule published in the second public notice.

No rule can be adopted until there have been at least two (2) public notices in the Indiana Register, two (2) public comment periods, and two (2) public hearings. Hence after

either the second, or third public comment period (if a third public comment period is necessary), the board may “final adopt,” or amend and “final adopt” the rule. The board also may reject the rule at any time. IDEM may also withdraw a proposed rule at any time before it is accepted for filing by the Secretary of State.

All final adopted rules are reviewed by the Attorney General and the Governor before being filed with the Secretary of State. Rules usually become effective thirty (30) days after they are filed with the Secretary of State, unless another, later effective date is specified by the rule.

What are the exceptions regarding the opportunity for public participation in the rulemaking process (described immediately above)?

Although the immediately preceding information generally describes the environmental rulemaking process that IDEM must follow, there are exceptions to this process.

IC 13-14-9-7 allows IDEM to make a determination that the rulemaking policy alternatives available to IDEM for a particular rulemaking effort are so limited that any more than one public notice and comment period will not benefit the environment nor persons regulated or otherwise affected by the proposed rule. However, in that event, the IDEM must support that position in writing as part of the single public notice and comment period.

Similarly, IC 13-14-9-8 states that if a proposed rule 1) simply adopts a federal law or regulation, 2) is a technical amendment with no substantive effect on an existing rule, or 3) is intended to clarify an existing rule, IDEM may determine that particular rulemaking requires no public comment period (and thus, no opportunity for the public to submit comments). However, in that event, IDEM must include, as part of the public notice published in the Indiana Register on the draft rule, the full text of its written findings on why no public comment period is necessary. That same public notice also shall include the full text of the draft rule as well as the date, time, and location of the first of the two public hearings to be held by the board on the draft rule.

However, when IDEM opts to limit public comment the affected environmental board may determine that the rule should be, or should have been, subject to public comment, and may reject a proposed rule on grounds that there was inadequate opportunity for public comment (see IC 13-14-9-12). If the board does reject a proposed rule because of inadequate opportunity for public comment, the rule must then be published in the Indiana Register. The published notice will include the full text of the proposed rule, the full text of IDEM’s findings to limit public comment, and a summary of IDEM’s response to any previous public comment (only if there was a prior public comment period). The public notice also will invite comments and suggestions on specific amendments to the proposed rule.

IC 13-14-8-8 allows a person who is affected by a rule, and who believes the impact of the rule would impose an undue hardship upon them, to apply for a variance that would temporarily prevent them from being subject to the rule. IDEM may hold a public hearing on a variance application, and if IDEM determines immediate compliance with the rule would cause undue hardship, it may grant a variance not to exceed one (1) year. Variances may also be renewed. Public notices for variance requests are published in the largest local newspaper with general circulation within the county for which a variance is being sought.

Additionally, under IC 13-14-8-9, variances, and renewals of variances, from a water quality standard that is at least in part the basis of a NPDES permit may be granted for not more than five (5) years and renewed for not more than five (5) years. IC 13-14-8-10 allows persons affected by IDEM's decision regarding the issuance of a variance to appeal the decision to the Indiana Office of Environmental Adjudication (OEA), ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204.

Appeals must be filed with the OEA in writing within fifteen (15) days (plus 3 days mailing time) of the date that the decision you are appealing was made public. notice of the decision. You may contact the OEA by phone at 317/232-8591 for answers to additional procedural questions you may have. (For additional information on appeals, see "What if you do not agree with IDEM's final decision? How can you file an appeal? page ___)

What other useful information should you remember about the rulemaking process?

If a newly enacted law requires that IDEM adopt a rule to help carry out that law, then IDEM may begin that rulemaking process before the law that authorizes the rulemaking becomes effective. However, IDEM must begin the rulemaking process no later than sixty (60) days after the law that authorizes the rulemaking becomes effective. This does not apply to amending existing rules, only new rulemaking authority.

IC 4-22-2-16 requires that the rulemaking of the IDEM-related boards must comply with the Open Door Law (IC 5 -14 -1.5). Under the open door law, IDEM must notify the public of the date, time, and place of any public meetings of the department or of the Air, or Water, Pollution Control Boards or the Solid Waste Management Board associated with a rulemaking. Notice of board meetings and hearings must be made at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. The announcement of a hearing (public meeting for a rule making) must be posted at IDEM's principal office and also made available to all news media that have previously requested to receive such announcements. At each public meeting associated with the rulemaking IDEM must post a meeting agenda at the door prior to the meeting, and maintain minutes that are available for public inspection or copying.

In addition, IC 4-22-2-17 requires that the rulemaking actions of the boards must comply with the Access to Public Records Law (IC 5 -14 -3), which places the burden of proof

for the nondisclosure of a public record on the public agency that would deny access to the record. IDEM must make available the full text of any proposed rule and of any matter incorporated into the rule.

IC 4-22-2-28 requires that the Indiana economic development council may review and comment on any proposed rule and suggest alternatives to reduce the regulatory burden on businesses. The agency shall also submit rules with an estimated economic impact of more than five hundred thousand dollars (\$500,000) to the Indiana Legislative Services Agency, which shall prepare, within forty-five days (45), a financial analysis concerning the effect the proposed rule will have on the state, and on the regulated community.

IC 13-14-9-10 requires that IDEM may not adopt a rule that differs substantially from the version of the proposed rule initially published in the *Indiana Register* unless it is a logical outgrowth of the proposed rule as supported by written public comments.

Under IC 4-22-2-45, any claim that a rulemaking is invalid because the proper rulemaking process (as described in IC 13-14-9) was not followed correctly must be filed within two (2) years of the adoption of the rule.

What determines when a public comment period (associated with a permit, variance request, rulemaking, or other IDEM decision) or an appeal period, officially begins and ends?

IC 4-21.5-3-2 states that, when computing the days within a public comment period, or the timeframe within which a decision may be appealed, the day the public notice was published (in a newspaper, or in the *Indiana Register* if it was a notice of a rulemaking), or permitting decisions was issued, are not counted as one of the days of the comment period or period within which an appeal can be filed. If the final day of a public comment period or period within which an appeal may be filed is a Saturday, a Sunday, a legal holiday under a state statute, or a day that the office issuing the notice or decision is closed during regular business hours, then the comment period, or period within which an appeal can be filed runs until the end of the following day. Counting of days after a notice is sent by way of the U.S. Mail begins with the day of postmarking, however three (3) days must be added to the allotted time period of any notice sent by U.S. Mail.

What is the *Indiana Register*, and what public notice information might it contain regarding rulemaking efforts by IDEM and the environmental boards?

The Indiana Administrative Code (which, as discussed on **pages __** is comprised of 158 separate “titles” listed in 12 large volumes), is the official annual Indiana publication containing all the rules of state agencies. The *Indiana Register* supplements the Indiana Administrative Code. Published on the 1st of each month by the Indiana Legislative Council, the *Indiana Register* acts as a source of information about the rules being

proposed by state agencies and acts as an "advance sheet" to the Indiana Administrative Code. In the *Indiana Register*, the Indiana Legislative Council publishes the full text of proposed rules, final rules, and other documents, such as executive orders and attorney general's opinions, in the order in which the Indiana Legislative Council receives the documents. With few exceptions, an agency may not adopt a rule, i.e., a policy statement having the force of law, without publishing a substantially similar proposed version in the *Indiana Register*.

IDEM-related environmental rulemaking information that appears in the *Indiana Register* is listed under the section titled "IC 13-14-9 Notices". Other IDEM-related material appears in the following sections of the *Indiana Register*:

- Errata – Corrections to previously published information
- Notice of withdrawals – Announcements that IDEM has withdrawn a proposed rule, and
- Final rules – Includes the language of final adopted rules sent to the Indiana Attorney General and the Governor for their approval before being filed with the Secretary of State.
- Emergency rules – Temporary rules adopted under IC 4-22-2-37.1.
- Change in notice of public hearing – lists any changes in previously announced public hearing dates.
- Other Notices – Miscellaneous agency notices.

IDEM Non-Rule Policy Documents also are published in the *Indiana Register*. Non-rule policy documents are guidance documents that – unlike rules – do not have the force of law, but which may help the regulated community and the public to interpret and comply with environmental rules and laws.

How can you view a copy of the *Indiana Register*?

Persons wishing to participate in, or track the progress of, environmentally-related rulemakings with which IDEM is associated will want to check the *Indiana Register* regularly. The *Indiana Register* is published and mailed monthly to most public libraries in Indiana so that non-subscribing citizens will have the opportunity to access the information published in it. Some university libraries also subscribe to the *Indiana Register*.

If your local public library does not currently receive a monthly copy of the *Indiana Register*, you can request that they contact the Legislative Services Agency, 200 West Washington Street, Suite 302, Indianapolis, IN 46204-2789 to be added to the *Indiana Register* mailing list, at no cost to the library. Or, you may view the information in the *Indiana Register* on the Internet at: <http://www.state.in.us/legislative/register/index-24.html>. Most public libraries in Indiana also offer Internet access. For additional information on the *Indiana Register*, or how your local library may receive a copy, please contact the Public Information Office of the Indiana Legislative Services Agency, at 317/232-9856.

Sidebar:

Most subscribers to the *Indiana Register* are businesses, industries, law firms, interest groups, and universities. Subscriptions cost \$128 per year. However, single monthly issues may be purchased from the Legislative Services Agency for \$13 each.

DRAFT

Part 3

How does IDEM help to protect your neighborhood and environment?

What types of activities does IDEM regulate?

A variety of activities could potentially pollute our neighborhoods or otherwise affect the environment. Commercial or industrial activities like manufacturing immediately come to mind. But in addition to factories, there are numerous other activities such as coal mines, gravel pits, grain or petroleum storage sites, car washes, hog barns, truck and auto repair shops, dry cleaners, power plants, open dumps, uncovered salt piles, or backyard trash fires that potentially could cause pollution that is regulated by IDEM.

What are “facilities” and “sources”?

Generally, IDEM uses two different terms to mean “an activity that potentially could cause pollution that is regulated by IDEM.” The term “facility” is used by both the Office of Water Quality and the Office of Land Quality to refer to such activities. So a factory or other activity that discharges polluted water, or that treats water to reduce or eliminate pollution before discharging it, is a “facility.” Similarly, a location that accepts waste for disposal also is referred to as a “facility.” Meanwhile, an activity or site that potentially could emit air pollutants is referred to as a “source.”

In some instances an activity may be both a “source” and a “facility.” A landfill, a “facility” that accepts waste for disposal also is likely to be a “source” of air pollutants. Similarly, factories or power plants can be “sources” of air pollution as well as “facilities” that discharge wastewater.

What tools does IDEM use to do its job: protecting the environment?

The section, “What is IDEM and what does it regulate? (See page __) listed many environmentally-related issues regulated by IDEM. But how does IDEM go about actually protecting our environment?

IDEM carries out numerous environmentally-related functions, each of which is a useful tool in helping to protect the environment. *However, the three (3) tools that probably are the most useful to us are:*

- 1) *permitting,*
- 2) *compliance, and*
- 3) *enforcement.*

How are these tools used by IDEM to protect our environment?

What are permits?

Persons wishing to engage in activities that generate by-products (such as air or water pollutants or waste) which could pollute our neighborhoods and the environment may

first need to obtain a permit from IDEM. Each environmental permit gives a person (or persons, such as with a company) permission to operate his or her facility. The permit also limits -- to the extent practical and affordable, to the extent technically possible, and to the extent required by law -- the amount of pollutants the person can legally emit or discharge while engaging in his or her intended activity. Facilities involved with waste disposal must obtain permits that similarly limit the manner in which wastes are disposed. (For more detail on how permits are issued, see pages __.)

What is meant by Compliance?

Next, IDEM watches permit holders to make sure they are in compliance with the requirements of their permits. We do this by reviewing reports that must be filed periodically by permit holders. We also conduct on-site inspections of facilities with permits. In addition to permit requirements, there sometimes are also other, “non-permit” requirements. These are environmental laws and rules that must be followed, even though they are not required by a permit.

Sometimes our inspectors also discover facilities that do not have the type of permit, or permits, they should have in order to do what they are doing. Or, we may discover facilities that are not required to have a permit, but still are failing to meet certain “non-permit” requirements. When facilities are not doing as required by their permits, or are failing to meet “non-permit” requirements, IDEM inspectors provide guidance on how to get back into compliance as quickly as possible.

When and how does IDEM undertake enforcement action?

Those persons who 1) violate the terms and conditions of their permits, or 2) construct or operate facilities or sources without the appropriate permits, or 3) violate “non-permit” requirements (such as conducting open burning or improperly handling or disposing of hazardous waste) are considered to be out of compliance with their permits, or with state environmental rules and laws. Those facilities and sources that do not make the operational changes necessary to return to compliance may be subject to enforcement actions by IDEM. First they may be issued a “warning of non-compliance” letter, then a Notice of Violation (violation letter). For more serious non-compliance issues, the enforcement actions could escalate to assessing fines and/or requiring a negotiated settlement. Ultimately, the continued failure to return to compliance could even lead to civil lawsuits, criminal charges, and/or the revocation of permits.

What other tools does IDEM have at its disposal to help protect the environment?

In addition to the “permits-compliance/inspections-enforcement” programs, IDEM carries out numerous other programs – such as the vehicle Inspection and Maintenance program, the Wellhead Protection Program, Citizen’s Complaint Clearinghouse, Pollution Prevention and Technical Assistance, Environmental Response (clean up of spills or the Mercury Collection program – to help protect the environment. (For more information on these programs [see _____](#).)

Part 4
A General Summary of the Public Participation Process

What types of opportunities do you have either to 1) learn that someone is seeking to engage in an activity that could affect the environment and which therefore requires and environmental permit or 2) let IDEM know your thoughts or concerns regarding an environmentally-related decision?

What types of environmentally-related activities regulated by IDEM include opportunities for you to get involved in the decision making process?

IDEM undertakes several different decision making processes that require that it seek input from the public. Those processes include, but are not limited to:

- 1) Issuing an environmental permit for a new activity of a facility,
- 2) Renewing an existing environmental permit,
- 3) Approving changes to an existing facility or source and its current permit (called a modification),
- 4) Allowing a permit to contain discharge or emissions limits that are less strict than current standards (called a permit variance),
- 5) Evaluating a contaminated site and approving a cleanup process, and
- 6) Making, changing, or eliminating a rule, or rules, used to carry out environmental laws and requirements.

These decision-making activities require IDEM, or the applicant, provide some kind of notice to the public. Public notice can include notifying next-door-neighbors or providing widespread, general public notice in newspapers or other media. Public notice also can include holding a comment period, accepting public comments, hold public meetings or hearings, or providing information about how to appeal a decision made by IDEM. Various types of IDEM decision making processes may each have its own public notice process. Thus, the type of public notice process to be employed is determined by the type of decision to be made.

What types of permits does IDEM issue?

IDEM issues environmental permits to:

- 1) construct and operate sources of air emissions,
- 2) construct wastewater pollution control equipment,
- 3) discharge wastewater from a point source onto the ground or into lakes or streams,
- 4) construct and operate facilities to handle or dispose of solid wastes,
- 5) construct, operate, or close facilities to treat, store or dispose of hazardous wastes, and
- 6) construct facilities to treat or distribute drinking water.

Within these six permit groupings, there are two types of permits; general permits and individual permits.

General Permits

What are “general permits,” and how do they protect the environment?

General permits are “one-size-fits-all” types of permits that significantly restrict the manner in which a specific type of regulated activity may be carried out. A general permit may also limit the amount of activity (production) that may occur.

General permits are best suited for the regulation of numerous, very similar, and generally smaller facilities and sources that have low levels of emissions and discharges. For example, when it comes to permitting requirements, one auto body paint shop is pretty much like any other, just as sand and gravel pits are all pretty much the same, or one coal handling facility is about like any other. With respect to limiting stormwater runoff, each construction site needs to take the same basic precautions, regardless of what is being built. Similarly, the possible environmental impacts associated with one grain elevator can reasonably be expected to be about the same as the environmental impact associated with all other grain elevators of similar size. So long as the applicant agrees to conduct their proposed activities under the pre-set limits established by the original “permit rule,” they will be able to operate under any general permit for which they are eligible.

Thus, general permits have been created for these “cookie cutter” types of activities. Because there are so many sources or facilities involved statewide in the types of activities allowable under a general permit, IDEM is able to save a great deal of staff time and state resources by using them. Instead of considering permit requests for such common and wide spread activities on a one-permit-application-review-process-at-a-time basis, IDEM’s general permits ensure that the environment is protected from the effect of hundreds of such construction sites, grain elevators, or other “like” activities. As a result, general permits allow both IDEM and the public to focus their time and energy on those facilities and sources that really have a potentially significant environmental impact.

Facilities and sources whose emissions and discharges could have a significant environmental impact are not eligible to operate under a general permit. Furthermore, facilities or sources that have a general permit, and who then expand their operations to the point that their emissions and/or discharge levels exceed the pre-set limits of their general permit, become ineligible to continue operations under a general permit, and must instead apply for an individual permit.

However, when a facility or source seeks to operate under a general permit (that is, a permit-by-rule or source specific operating agreement), there are limited opportunities for participation in the decision making process. That is because any concerns about the environmental impact of a particular type of activity allowed under general permits were addressed during the rulemaking process that initially created the general permit.

What types of activities are regulated by “general permits”?

General Wastewater Permits

There are eight types of general permits for wastewater discharges. These are also frequently referred to as a “permit-by-rule.” They include:

- 1) Stormwater (rain or melting snow and ice) runoff from construction sites,
- 2) Stormwater runoff from selected industrial facilities,
- 3) Cooling water (from boilers) that has not been mixed with any sanitary wastewater or wastewater from industrial processes,
- 4) Water from settling basins at sand and gravel pits or stone quarries,
- 5) Water from settling basins at coal mines, and
- 6) Wastewater from three (3) different general permits issued for petroleum-related activities, such as discharges from petroleum products terminals, ground water remediation systems for gasoline, or testing pipelines.

General Drinking Water Construction Permits

Water main extensions for public water systems may be constructed using a general permit.

General Air Emissions Permits

There also are various types of general permits for specific “low emissions” sources of air pollution called Source Specific Operation Agreements. A SSOA (pronounced sah•so•a) may regulate the operation of grain elevators, sand and gravel operations, stone crushers, paint shops, woodworking shops, concrete batch plants, degreasing operations, and certain print operations. In fact, there are various sizes of SSOAs for each of these types of activities. So, for example, a woodworking shop might have a different level of SSOA depending on the overall size of the shop. There also are SSOAs for boilers and for certain large internal combustion engines, or turbines. A source may have up to four (4) different types of SSOAs at one location.

The IDEM Air Permitting Branch also allows some sources to operate under a “permit-by-rule.” This type of general permit may be used by any source that can readily demonstrate that its actual emissions never exceed twenty percent (20%) of the emissions of a major source. Sources operating under the “permit-by-rule” either asked the IDEM Air Permitting Branch to void their existing permit because their actual emissions were low enough to ensure eligibility, or they never submitted a permit application because they were confident that their actual emission made them eligible. Sources operating under the “permit-by-rule” must be able to demonstrate for any 12-month period that their actual emissions did not exceed “permit-by-rule” thresholds.

What are your opportunities for public participation when someone is seeking a general permit for an activity that could be located in your neighborhood?

Again, because each general permit of a particular type contains the very same permit language and emissions or discharge limits as all the other permits issued under that rule, there is limited opportunity for public participation associated with the issuance of a general permit. The permit language and emissions or discharge limits were all set when the rule was adopted that created the permit. Thus, there is no need to solicit additional comment about what should be in the permit, because each general permit issued in accordance with the rule will contain the exact same, pre-set language and limits. In fact, that is why a general permit is sometimes called a “permit-by-rule.” Hence the public

What is the public notice process for a “general permit” or “permit-by-rule”?

To obtain a wastewater permit-by-rule, the person seeking to engage in activities in the pre-prescribed manner of the general permit (the applicant) simply publishes a notice in a local newspaper of general circulation that 1) identifies himself or herself, 2) announces the location of the proposed activity, 3) describes the proposed activity, 4) cites (for some general permits) the name of the stream receiving any discharge, and 5) identifies the type of general permit under which they intend to carry out the proposed activity. For example; “John Doe will be discharging wastewater from a 2 acre coal settling basin into “Wet” Creek near State Road 1, in section 14 of “Any” Township in “Some County”, Indiana, under state rule 327 IAC 15-7

Similarly, under the drinking water construction permit-by-rule, the town of Anyplace, Indiana, could place a notice in the newspaper that “the Anyplace water utility will be extending a water main from Maple Street, 1000 feet into a new subdivision during the first two weeks of May, 2002, under the permit-by-rule in 327 IAC .”

The applicant also must send a photocopy of that published announcement to IDEM along with a completed form known as a Notice of Intent (NOI), which serves as the application. That newspaper notice is the only public notice required for a general “permit-by-rule” issued by the Office of Water Quality.

Unlike the general permits issued by the Office of Water Quality, there is no requirement that applicants for general permits for air emissions (SSOAs or permits-by-rule) to post a public notice that they are seeking a general permit. However, as with all IDEM permits, you may file an appeal with the Indiana Office of Environmental Adjudication (OEA), ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. Appeals must be filed with the OEA in writing within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of the date that the decision you are appealing was made public. (For additional information, see “What if you do not agree with IDEM’s final decision? How can you file an appeal?”, [page __](#).)

Sidebar:

Nine (9) of the twenty-three (23) types of SSOAs issued by the Office of Air Quality also require the applicant to obtain a construction permit, which includes a public notice process (See air construction permits, [page __](#)). The remaining fourteen (14) types of SSOAs do not require a construction permit.

Individual Permits

On the other hand, individual permits are issued on a case-by-case, facility (or factory) specific basis. Individual permits usually are most appropriate for the regulation of large or complex facilities and sources with a potential for significant environmental impact.

What is the overall process IDEM follows to issue an individual environmental permit?

Although the review process for each of the various types of air, waste, and water permitting programs is described in detail in Part 4 of this document, titled “How do each of the IDEM environmental permitting programs work?”, what follows here is a description of the process for issuing individual permits:

- The person(s) seeking the permit (the applicant) submits a permit application form and a non-refundable fee.
 - 1) The application requests administrative information such as;
 - who will own, or assume legal responsibility for the facility, or source,
 - where can they may be reached, and
 - where the new facility or source is to be located.
 - 2) The application also should include detailed technical information describing the facility and how it will be built and operated. The level of detail may differ, depending on the complexity of the proposed activity.
- State law allows IDEM only a certain amount of time to review each of the various types of environmental permit applications, and to make a decision about whether to issue or deny a permit. The time limit varies with the type of permit being sought. Thus, when a permit application is received, a “time clock” begins to run. That time clock only stops running if 1) IDEM is waiting for the applicant to provide additional information needed to make a permitting decision, or 2) if the applicant agrees that the time clock may be stopped. If a public hearing is held regarding whether to issue the permit, thirty (30) additional days are added to the “time clock.”
- Most types of permit applications will require that the applicant provide a list of persons who may be affected by the issuance of the permit. IDEM will then be responsible for notifying all the persons on that list. In addition, IDEM must notify specific local officials identified by the applicant.
- Except for permit renewals, applicants generally are also required to notify their immediate neighbors (adjoining property owners or occupants) that an application for a permit (for a new or expanding facility or source) has been filed.
- Each IDEM permitting program requires that the application must be fully completed, and all necessary information provided, before IDEM begins to consider whether to issue the permit. If portions of the application are incomplete, or additional information is required prior to beginning review of the permit request, a Notice of Deficiency (NOD) will be sent to the applicant. If an NOD is sent to the applicant,

the permit ‘time clock’ will be stopped, and no further work on the permitting request will be done until all the application requirements have been met.

- **Public Notice and Public Comment of Individual Permits**
 - For the various types of permits for solid waste disposal issued by the IDEM Office of Land Quality (OLQ), a thirty (30) day public comment period is held as soon as it has been confirmed the all the information required to process the application has been received.
 - For the permits for air emissions or wastewater discharges issued by the Office of Air Quality (OAQ) and Office of Water Quality (OWQ), staff will first review the completed application, and prepare a draft permit that includes all the limitations and requirements laws and rules say should be included in the actual permit. Once the draft permit is prepared, it is made available for public review during a thirty (30) day public comment period.
- At the conclusion of the public comment period, IDEM permit program staff will consider all comments received during the public comment period, and may prepare the document that will be the final permit. Staff also will prepare written responses to all comments received during the public comment period.
- **The Permitting Decision**

A notice of decision describing the project, type of permit requested, and whether a permit was issued or denied, will be sent to the applicant, various local officials, any persons who submitted public comments or otherwise requested that they be notified of the decision (such as persons on program area mailing lists), and any persons identified by the applicant as having an interest in the decision.
- If a permit is issued, the applicant will receive a copy of the permit. The various permit programs vary regarding who else may receive a copy of the permit. For those persons who do not receive a copy of the permit, the notice of decision will describe where to go to view a copy of the permit. You can also request a copy, but a copying fee may be charged. The notice of decision also will include IDEM’s response to the comments received during the public comment period, and at any public hearing that may have been held. If the permit is denied, the notice of decision will also explain why IDEM denied the permit.
- **Appeals**

Each notice of decision also will provide information about how the applicant, or any interested party, may appeal IDEM’s final decision to issue or deny a permit. Appeals must be filed with the Indiana Office of Environmental Adjudication (OEA), ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. Appeals must be filed with the OEA in writing within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of the date that the decision you are appealing was made public. (For additional information on appeals, see “What if you do not agree with IDEM’s final decision? How can you file an appeal? page __)

Should you be notified if a new facility or source, which will be engaged in activities that could affect the environment, is proposing to locate on the property right next door to you? (Or if a facility or source already located right next-door to you is proposing to expand?)

State law IC 13-15-8, often referred to as the notification of “adjoining property owners and occupants”, requires that any person or company intending to expand, or to build a completely new facility or source that could affect the environment on the property right next door to property you own, or right next-door to property you rent, such as your business or home (or, if you live in an apartment, the property right next door to your apartment building or apartment complex), must notify you that they are seeking an environmental permit, or permits. (Adjoining property owners and occupants includes those persons located on the other side of the street or road from the facility seeking an environmental permit, or permits.)

This requirement applies to nearly all air, water, or waste disposal permits. If the applicant fails to meet this requirement to notify adjoining property owners and occupants, that failure can be grounds for an appeal of any permit that is issued. (See “What if you do not agree with IDEM’s final decision? How can you file an page __.”)

The person seeking the permit must provide this notice to you in writing within ten (10) working days (not including Saturdays, Sundays, state holidays) of when they submit their environmental permit application(s) to IDEM. Their written notice must include the date on which the application for the permit was submitted to IDEM and must briefly describe the proposed project and the type of permit, or permits, being sought.

If the proposed new facility or source must obtain more than one new environmental permit, or if the proposed change to an existing facility or source requires changes to more than one currently held permit, then the person or company seeking the permits or changes must notify you separately for each particular application they submit to IDEM for a new permit or a permit change. However, they may send you a single notice listing more than one application for a permit or change to an existing permit, if those applications were all submitted to IDEM within the same ten (10) day period (not including Saturdays, Sundays, state holidays).

The requirement to notify next-door neighbors (adjoining property owners or occupants) does not apply to the renewal of any existing permit when no expansion is being sought as part of that permit renewal. It also does not apply to permits for the construction or installation of, or any changes to, 1) a sanitary sewer, 2) a storm sewer, 3) a public water supply, 4) a water main extension, or 5) for a 401 Water Quality Certification

When or how are your local officials involved?

State law IC 13-15-3-1 requires that IDEM must notify your county commissioner and your city or town mayor (or town council president, if there is no mayor) within ten (10) days of the receipt of an application for an environmental permit. Depending on the type of permit or approval being sought, other local officials may also be notified. Some permitting programs also notify local officials of the final permitting decision. These additional details will be listed in the more specific descriptions the public notice processes of IDEM's various permitting programs, found in Part 4 of this Citizens Guide.

What is a public notice?

A public notice generally is a legally required announcement to the public regarding an approval activity by some level of state, federal, or even local government. It is a way in which you can learn about proposed activities that could be located near you.

As a state agency, IDEM is required to use the public notice process to announce that it has received requests for approvals for activities it regulates. Sometimes, the person, business, or local governmental unit that is actually seeking the approval to undertake a regulated activity is required to place the public notice itself, rather than it being posted by IDEM.

Some of the environmentally-related activities within Indiana for which IDEM must post a public notice include the review of:

- 1) Requests of new environmental permits,
- 2) Requests to renew existing environmental permits,
- 3) Requests to change existing permits (permit modifications),
- 4) Requests to be issued a permit with discharge or emissions standards that are not as strict as the more stringent standards normally required because the person or person(s) seeking the permit believes the expense of meeting those "more stringent" requirements is so great as to cause undue financial hardship on that person(s) and their customers (permit variance),
- 5) Approval of contamination cleanup projects, and
- 6) Development and adoption of new state environmental rules or to change, renew, or cancel an existing rule or rules.

Where are public notices posted?

State law requires that all public notices, including those from IDEM, must be published in the largest newspaper of general circulation within the county where the activity discussed in the notice is to take place. Unfortunately, newspapers generally publish public notices in the "legal section," in small print. So if you hear, or suspect, that some type of environmentally-related activity may be proposed for your neighborhood, you may want to start paying closer attention to that part of your newspaper. Or, you can contact IDEM toll free at 800/451-6027. (For more information on how to learn about, and participate in, environmental decision making processes carried out by IDEM, including learning how to get on IDEM mailing lists, see Appendix A, in the back of this guide.)

Some of IDEM's approval processes may have additional notice requirements. For example: rulemaking notices also must be published in the *Indiana Register*, violations of the Safe Drinking Water Act may need to be announced over the radio, and any notice for air permits in Lake County is always published in two newspapers. These additional details will be listed in the more specific descriptions the public notice processes of IDEM's various permitting and cleanup programs, found in Parts 5 and 6 of this guide.

What information is included in a public notice?

Public notice announcements generally must:

- 1) identify the person, business, or unit of local government seeking approval from IDEM (or whatever agency has authority over the matter for which they are seeking approval) to carry out a particular activity,
- 2) describe the activity for which approval is being sought,
- 3) describe the type of approval being sought (the type of permit or other approval)
- 4) describe the location where the proposed activity will take place,
- 5) identify, and provide a telephone number for, a contact person at IDEM who can provide additional information to any person interested in the request,
- 6) describe how to request a public hearing, and
- 7) establish the beginning and end dates of a "public comment period" (usually 30 days) during which persons may submit to IDEM any comments or concerns regarding the proposed project and approval process. The public notice also should list the address where written public comments can be sent.
- 8) If it already has been determined that there will be a public meeting or public hearing held to discuss whether IDEM should approve the requested activity, or to place additional limits on it, then the date, time, and location of that public meeting or hearing also may be listed in the public notice.

What is a "public comment period"?

Like the public notice requirement, the public comment period is a legal requirement. Not just IDEM, but nearly all non-legislative branches of state, federal, or local government that approve or deny requests by persons, companies, or governmental bodies to carry out regulated activities, must provide a public notice, and hold a public comment period. The purpose of the public comment period is to allow you – indeed, any member of the public – to add your voice to the decision making process.

Most IDEM public comment periods are for thirty (30) consecutive days, beginning with the day after the public notice announcing the public comment period first appears. If the thirtieth (30th) day of a public comment period falls on a weekend day, state holiday, or other day when state governmental offices are closed during regular business hours, then the public comment period will end on at the close of the next day on which state offices are open for business. Although most IDEM public notice periods are for thirty (30) days, some comment periods be short as twenty-one (21) days, and others as long as forty-five (45) days.

Upon request, some IDEM programs holding public comment periods may agree to extend the public comment period beyond thirty (30) days. Such extensions, when granted, generally add an additional seven (7), ten (10), or fifteen (15) days, during which public comment will be accepted. Again, it is left to the particular program in question whether to grant an extension, and persons seeking an extension may be required to demonstrate why the extra time is needed. Such requests must be made through the contact person listed in the public notice.

If IDEM agrees to a request for a formal hearing either during or after the public comment period, either the public comment period may be extended, or an additional comment period will be held in association with that hearing. The opportunity to submit comments also may be extended for a few days after the hearing in order to give persons who attending the hearing, or who learned new information at the hearing, additional time to submit comments.

What types of comments are accepted during a public comment period?

It is recommended that public comments be written and submitted to the address provided in the public notice announcement. If the public notice announcement included a date and location for a public meeting, you may submit your written comments at that meeting.

In fact, if there is a public meeting you probably will have an opportunity to speak, during which you can present and add to your written comments, or simply stand and provide your comments verbally, without submitting any written comments. However, please keep in mind, that while verbal comments will be noted, they will not be recorded word-for-word. Verbal comments are only recorded word-for-word if there is a public hearing. (Public meetings and hearings are conducted somewhat differently. For more on those differences, see “How does a public hearing differ from a public meeting?” on page __.)

In addition, if you prepare written comments, you need not attend a public meeting or hearing to submit your comments. You can simply mail, fax, or deliver your comments in person to the IDEM address provided in the public notice. Furthermore, IDEM will provide a written response to all written comments, but will only respond to verbal comments made during a formal public hearing. IDEM’s written responses will accompany the agency’s final announcement to issue or deny a permit or other approval.

Of course, you may make whatever verbal or written comments you wish. You may speak in favor of a proposed activity, oppose approval for such an activity, or merely share concerns about whether and how it could affect you, your family, your neighborhood, or the environment generally. You could also make a case that a permit only be issued if certain conditions are included. Regardless of your position, comments that are based on facts and refer to specific laws, rules, and regulations, specific technical or scientific information, or specific facts about the proposed site will likely have more

impact on IDEM's final decision than simply stating that you are for or against issuing a permit or other approval for the proposed activity.

What generally happens at a public meeting?

IDEM is not required to hold a public meeting for every permitting decision or other approval request the agency receives. However, any time it is perceived that there is reasonable interest by the general public, IDEM may go ahead and schedule a public meeting as part of the public notice process. Or, the agency may opt to hold a public meeting if someone requests that one be held.

Public meetings are informal and informational in nature. IDEM usually invites the applicant -- that is, the person, business, or unit of local government seeking a permit or other IDEM approval -- to attend the meeting and to make a presentation about its proposal. Most applicants are happy to do this. IDEM may also bring fact sheets to the meeting that describe the decision making process. After presentations are made, a question and answer session, or other dialogue, may follow. A commitment is made to follow up on questions that cannot be answered immediately.

How does a public hearing differ from a public meeting?

A public hearing is more formal than a public meeting. Like meetings, public hearings may be requested by any person, but IDEM retains the right to determine whether a hearing will be held. If a hearing is held, it will be run by a hearing officer, all comments will be recorded, and a transcript will be made. However, in place of a back and forth dialogue, your questions will be noted, but will only be responded to in writing at the time the final decision on the request for a permit (or other approval) is made public. Some IDEM programs hold a combined meeting and hearing, holding the formal hearing either before, or after, a more open dialogue, which could include a question and answer session.

Who is notified of IDEM's final decision to issue or deny a permit or other approval?

When the permitting decision is issued a Notice of Decision is sent to the applicant, local city and county officials (the same officials who were notified earlier that an application for a permit or other approval had been received), any persons who submitted public comments, and all other persons on IDEM mailing lists for the specific facility, source or county in question. The Notice of Decision describes whether and why the permit or other approval was issued or denied, and outlines the procedure for filing an appeal.

The various programs may differ in who else may receive a Notice of Decision. Some programs may even provide a copy of the permit. Most programs post all final decisions on the IDEM website. These additional details will be provided in the more specific

descriptions of the public notice processes of IDEM's various permitting programs, found in Part 5 of this Citizens Guide.

What if you do not agree with IDEM's final decision? How can you file an appeal?

All decisions issued by IDEM, including permit decisions, may be appealed. If you are dissatisfied with a decision by IDEM, and wish to file an appeal, you must do so in writing. You must submit your written appeal to the:

Indiana Office of Environmental Adjudication (OEA),
ISTA (Indiana State Teachers Association) Building,
150 W. Market Street, Suite 618
Indianapolis, IN 46204.

There are no standardize forms to fill out and submit, so you must state your case in a letter to the OEA.

Petitions for appeal must be filed within fifteen (15) day of the date of the IDEM decision being appealed. Three (3) additional days are added if you are submitting your appeal petition by mail, rather than in person. If the 15th day (for petitions delivered in person) or the 18th day, (for petitions delivered by mail) falls on a weekend day, a state holiday, or other day when the OEA is closed during regular business hours, then your petition will be accepted on the next business day on which OEA is open.

The request for an appeal should be accompanied by a request for a stay. (A stay is a request that the approved action not be allowed to take place until a decision has been made regarding the appeal.) Otherwise, when an appeal is filed, the approved action will only be suspended for fifteen (15) days, after which the action being appealed may be carried out while the appeal process continues. For example, if an appeal is being filed regarding the construction of a equipment that will emit air pollutants, construction of that equipment can begin fifteen (15) days after the appeal is filed, unless a stay was also requested, and granted.

As per IC 13-15-6-2, any request for an appeals hearing must identify the person seeking the hearing, their interests, and anyone they are representing.

Before a hearing is granted, the appellant must identify the reason for the appeal request and the issues proposed for consideration at the hearing. The request also must identify the permit terms and conditions that, in the judgement of the person seeking the hearing, would appropriately satisfy the requirements of law with respect to permits of the type in question. That is, you must suggest an alternative to the language in the permit, or other order, or decision being appealed, and your suggested changes must be consistent with all applicable laws and rules.

In turn, the Office of Environmental Adjudication (OEA) will provide persons filing appeals with notice of any prehearing conferences, preliminary hearing, hearings, stays, or orders disposing of the review of this decision.

You may contact the Office of Environmental Adjudication by phone at 317/232-8591 for answers to additional procedural questions you may have. (The OEA will be happy to help you understand procedural issues, but do not expect that you will be able to discuss details of your case other than in a formal setting such as a prehearing conference, a formal hearing, or a settlement conference. The OEA is prohibited by law from discussing a case without all sides being present.)

DRAFT

Part 5

How do each of the various different IDEM environmental permitting programs work?

Part 4 of this Citizens Guide explained in general terms the public participation process for all the various types of environmentally-related approvals IDEM issues. Here in Part 5, we will try to provide more specific information about the public participation process for each particular type of permitting program.

Who needs an environmental permit?

Generally, persons wishing to engage in the following activities regulated by the Indiana Department of Environmental Management (IDEM), including:

- 1) the construction and operation of sources that will emit certain levels of regulated pollutants into the air,
- 2) the construction and operation of facilities that will discharge certain levels of regulated pollutants into the waters of the state,
- 3) the construction and operation of facilities that may store, process, or permanently dispose of solid or hazardous wastes, or
- 4) the construction of facilities associated with providing safe drinking water to the public

must first apply for, and obtain, a permit or other approval from IDEM

Indiana state law establishes: 1) the time limits within which IDEM must make permitting decisions, 2) the amount of application fees to be charged, and 3) what steps either IDEM or the permit applicant, or both, must take to inform the public about what activities the applicant intends to carry out. As explained on [page __](#), state law also established the environmental boards that have developed rules providing most of the other details about how permits should be issued, and what permits should say about how a facility should be operated.

Why is it that the IDEM environmental permitting programs have to be so different from each other?

IDEM has five separate environmental permit programs for air, wastewater, drinking water, solid waste disposal, and hazardous waste disposal permits. Each of these programs comes from specific federal legislation. The Clean Air Act led to the development of air permitting programs, the Clean Water Act and the Safe Drinking Water Act led to the development of the water permitting programs, and the Waste Disposal Act and its descendent, the Resource Conservation and Recovery Act, led to the development of the waste disposal permitting program.

Because each of these permit programs was developed from separate federal laws, there are numerous differences in the way each of these types of permitting requests are processed. However, the application review and decision making process of these various permitting programs do have similarities.

What are the specific public notice requirements and opportunities for public participation for EACH of the various permits issued by IDEM?

First, regarding all IDEM environmental permits:

- 1) Permit applicants must always notify adjoining property owners and persons occupying adjoining property within 10 business days of submitting their application to IDEM, except if the application is for:
 - A renewal of an existing permit, but only if the renewal request does not also include an expansion,
 - Permits for the construction, installation, or modification of:
 - 1) a sanitary sewer,
 - 2) a storm sewer,
 - 3) a public water supply
 - 4) a water main extension,
 - 5) any water or wastewater operator training approvals, reports or certifications, or
 - 6) a 401 Water Quality Certification.
- 2) IDEM must notify local county and city (or town council) officials of the affected county and city (or town) within which the facility or source seeking an environment permit will be located, than an application for a permit has been received.
(IC 13-15-3-1)

Air Permits

What types of air permits are there?

All permitting decisions regarding air quality in Indiana are made by the IDEM Office of Air Quality (OAQ) or local air agencies authorized by the OAQ. This decision making process is based on state and federal law, and on rules adopted by the Air Pollution Control Board.

All sources, except those whose potential emissions are so low as to make them exempt from regulation, must have Office of Air Quality approval before they may construct or operate any source of air pollutants or any air pollution control equipment. (Except that certain air pollution control projects are exempt from OAQ approval requirements.) In addition to new construction, any construction or operational changes which have the potential to increase emissions at existing sources, also generally require some level of “pre-construction approval” from OAQ. The greater the expected emissions at a new or modified source, the higher the level of permit approval required.

Thus, gaining Office of Air Quality approval could be as simple as registering as a source of air pollutants, or it could be more complex, requiring the source to obtain a state or federal level construction permit or modification approval. Some levels of construction approval for smaller sources automatically allow the source to operate when construction is completed. Otherwise the source must obtain, or be transitioned to, an operating permit after construction is completed, and before operation may begin.

The level of permitting or other regulation that a source of air pollutants must conform to is based upon its “potential to emit,” or PTE. The PTE is always calculated using the worst case scenario; that is, it is assumed that the source will be operating twenty-four hours (24) per day, three hundred and sixty-five (365) days per year, producing the maximum amount of pollutants that could reasonably be expected for that activity, without using any pollution control technology.

Depending on its potential to emit (PTE), a source can be either:

- 1) Exempt from any permitting requirements, (That is, its PTE is fairly low so it is not required to obtain a permit or any other pre-approval from Office of Air Quality prior to construction and operation.), although the construction and operation of the source still would be subject to all applicable regulations,
- 2) Subject to registration, (That is, its PTE is high enough to require that it register with OAQ as a source of air pollution, but not so high as to require that it obtain a detailed, source specific permit.) requiring that the source register with IDEM prior to construction and operation, or
- 3) Subject to permit requirements (That is, its PTE is high enough to require that it obtain some level of permit prior to constructing either the units that will be generating the air pollutants, or any pollution control equipment. (Except that certain air pollution control projects are exempt from OAQ approval requirements.) Once construction is completed, it will also need an operating permit prior to operating the equipment (Except that those generally smaller sources which may be eligible for some types of Source Specific Operating Agreement may both construct and operate under that agreement, instead of obtaining both construction and operating permits).

Sidebar:

Those sources that are exempt from regulation generally have a “potential to emit” (PTE) of less than 25 TPY (tons per year) for carbon monoxide, less than 10 TPY for sulfur dioxide or nitrogen dioxide and other oxides of nitrogen, less than 400 pounds per year for lead, or less than 5 TPY for any other regulated pollutant.

Those sources subject to registration generally have a PTE that is above exemption levels, but less than 100 TPY (tons per year) of carbon monoxide, and/or less than 5 TPY of lead, and/or less than 10 TPY of a single hazardous air pollutant, and/or less than 25 TPY for a combination of hazardous air pollutants, and and/or less than 25 TPY of the other regulated pollutants.

Those sources that are subject to permit requirements have a PTE of equal to or greater than 100 TPY (tons per year) of carbon monoxide, and/or equal to or greater than 5 TPY of lead, and/or equal to or greater than 10 TPY of a single hazardous air pollutant, and/or equal to or greater than 25 TPY for a combination of hazardous air pollutants, and and/or equal to or greater than 25 TPY of the other regulated pollutants.

Sources that should have registered or obtained a permit from the IDEM Office of Air Quality, but failed to do so, will be subject to enforcement action.

How are permits issued to potential sources of air pollution (possibly in your neighborhood), and how can you participate in the permitting process?

Like all other applicants seeking permits from IDEM, applicants for air permits must notify adjoining property owners and occupants no later than ten (10) days after submitting an application to IDEM. They also must submit, as part of the application, an

affidavit stating that they will meet that notice requirement. (See, “Should you be notified if a new facility or source, which will be engaged in activities that could affect the environment, is proposing to locate on the property right next door to you?” on page .) The applicant also must identify and provide the addresses of local county and city (or town) elected officials as part of the application. This information will help Office of Air Quality notify those officials about the application and the final permitting decision.

Within ten days of submitting a permit application, the applicant must also place a copy of the application in a library in the county where the source will be located. The applicant also must notify Office of Air Quality of the location of the library. As additional information – such as supplemental application information from the applicant, public notice announcements, proposed permits, technical support documents, calculations, and fact sheets – becomes available, it also should be placed at that same library.

Most low level air approvals such as: 1) registering as a source, 2) gaining approval to make minor changes to a source or permit, or 3) agreeing to operate under one or more SSOAs (Source Specific Operating Agreements are considered general permits, see “What are “general permits,” and how do they protect the environment?” Part 4, page) do not require a public notice or comment period. (However, some sources seeking to operate with a SSOA may be large enough to require a “construction permit”, which does require a public notice and comment period.)

If you wish to monitor the issuance of low level air permitting approvals in your neighborhood, or county, you can do so by checking regularly for new air permit applications on view at your local library. You also may request to be placed on the IDEM Office of Air Quality (OAQ) mailing list of persons to be notified about air permitting approvals being sought in your county. Or, you can track minor permitting approvals on the OAQ web page.

On the other hand, new sources large enough to require an individual permit must always undergo a public notice and thirty (30) day public comment period. This public notice requirement applies both to “construction permits” for new sources or significant changes (modifications) to existing sources, and to all “operating permits” (except SSOA and permit-by-rule sources).

Sidebar:

Types of permits issued by the IDEM Office of Air Quality (OAQ), and the timeframes within which OAQ must act on each type of permit application:

Permit Type	Timeframe*
New Source Construction Permits	120 day time clock
Federal Air Construction Permits, PSD* Review	270 day time clock
(*Prevention of Significant Deterioration of existing local air quality)	
Minor Source Operating Permit (MSOP)	No specific time clock
Federally Enforceable State Operating Permit	270 day time clock
Title V Operating Permit	18 month time clock
Significant Permit Revisions to MSOP	120 day time clock

Significant Permit Revisions to FESOP	(270 days with PSD Review) 120 day time clock
Significant Title V Source Modifications	(270 days with PSD Review) 120 day time clock
Significant Title V Permit Modifications	(270 days with PSD Review) 270 day time clock
(* the length of time within which IDEM must issue a decision)	

Once the Office of Air Quality staff has prepared a draft permit for a requested new source or significant change to an existing source, a public notice is published in the largest nearby newspaper within the county in which the source is located. In Lake County, notice is published in two newspapers.

The public notice describes the proposed activity and permit, and identifies who is seeking the permit. It also announces that Office of Air Quality (OAQ) has drafted a proposed draft permit, advises where the draft permit may be viewed (at the library), and declares that the public may submit comments during the 30 calendar days beginning the day after the notice appears in the newspaper. The notice also identifies an OAQ contact person who can provide additional information. (Persons also may view the draft permit at IDEM, or request a copy from the OAQ Permits Administration 317/233-0178 [*a small copy fee may be assessed*]). If a public meeting or public hearing already has been planned by the OAQ, the date, time, and location of the meeting will be included in the public notice.

If a public meeting or a public hearing was not included as part of the public comment period, then any member of the public may request that one be held. The Office of Air Quality generally will agree to such requests. However, OAQ may first make contact with the person or persons requesting the public meetings or hearings to see if their questions or concerns can be addressed directly. If a public meeting or hearing is to be held, OAQ will place a second public notice in the same newspaper which provides the date, time, and location of the public meeting or public hearing, and extends the public comment period for 30 additional days. Public meetings and hearings are typically held in the evenings, at a location near the site for which the permit is being sought.

After the public comment period, the OAQ will review any public comments before issuing a permit decision. Certain OAQ draft permits, such as Title V Operating Permits or federal PSD (Prevention of Significant Deterioration) construction permit reviews also may be reviewed by the U.S. EPA, which will also review all public comments received by IDEM during the public comment period. After all reviews have been completed, IDEM will issue a decision regarding the request for a permit, or approval for change to an existing permitted source. At that time, a Notice of Decision will be sent to the applicant, local official, any local air agency officials, all persons on the OAQ mailing list for the affected county, and all persons who submitted comments or who attended a related public meeting or hearing at which they made a written request to be notified of OAQ's final permitting decision. The Notice of Decision will describe the decision, provide responses to comments, and include information on how to appeal OAQ's decision. If OAQ decided to issue a permit, a copy of the permit also will be provided, along with a technical support document. This information will be posted on the OAQ portion of the IDEM web site, too.

You may enroll at any time, to be on any of the Office of Air Quality mailing lists. Once you are on a particular mailing list, you will be notified by OAQ each time a permit application is received (any permitting request is made) or permitting decision is made regarding a specific source, or regarding any source within the county in which you live, or within any other county that you designate. You may arrange to be notified by U.S. Mail service or by e-mail via the Internet. To be placed on an OAQ mailing list, please contact the OAQ Permits Administration at 317/233-0178.

As mentioned above, if you were signed up to be notified regarding an Office of Air Quality permitting decision, the Notice of Decision you receive will include information on how you may appeal the decision. As with all other decisions issued by IDEM, appeals must be filed in writing with the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. Petitions to appeal must be filed within fifteen (15) days (plus 3 additional days if the petition is sent by U.S. Mail) of the date of the issuance by OAQ of the Notice of Decision. (For more information on filing an appeal see, “What if you do not agree with IDEM’s final decision? How can you file an appeal?”, **page 11** of this guide.)

Sidebar:

There is a separate appeals process associated with the issuance of initial (first time) Title V Air Operating Permits only. Under IC 13-15-6-1(b), IDEM’s issuance of an initial Title V Air Operating Permit may be appealed to the U.S. EPA’s Environmental Appeals Board (EAB), in Washington, D.C. Such appeals must be received by the EAB within thirty (30) days of when IDEM issues a Notice of Decision. No special consideration is given regarding whether the appeal is sent by mail, or if the 30th day falls on a weekend day or holiday. Appeals should be mailed to:

Environmental Appeals Board, MC 1103B
U.S. EPA, Ariel Rios Building
1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460

For more information about filing an appeal with the U.S. EPA Environmental Appeals Board, call (202) 501-7060, or visit the EAB webpage on the EPA website at:

<http://www.epa.gov/eab/index.htm>

What is the “variance” process for open burning, and how can you participate in the decision making process that allows such variances?

The opportunity for public participation regarding an open burning variance comes after the Office of Air Quality (OAQ) has issued a decision.

What is a variance?

Indiana generally does not allow open burning, which is defined in the state air rules as "the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber." However, there are a few limited exemptions to the rule. 326 IAC 4-1-3 lists materials that are exempt from open burning rules, and describes the conditions under which such exempted materials may be burned, while 326 IAC 4-1-4 establishes that the IDEM Office of Air Quality (OAQ) may also

authorize emergency burning on a case-by-case basis. Otherwise no open burning may be carried out without a variance.

A variance is an approval from OAQ permitting open burning not otherwise allowed. Variances generally are issued for one year, or less, and must be for purposes of fire training, burning natural growth derived from a clearing operation, burning high explosives or other dangerous material where no alternative disposal method exists or where transportation of the material would be dangerous, burning clean wood products, or the burning of natural growth for the purpose of land management. The OAQ also issues variances for an apparatus known as an air curtain open pit destructor, which consists of a high-velocity fan that forces air through ducts in such a manner as to facilitate more rapid and complete combustion of clean wood waste and woody vegetative wastes being burned in a pit. When a variance is issued, strict criteria must be followed regarding how, when, where, and under what circumstances open burning is allowed.

The open burning variance request application requires the addresses of both the local fire and health departments. It also requires that the applicant list the names and addresses of all potentially affected persons (including any persons who own or rent property within five hundred (500) feet of the proposed burn site).

Once a decision has been made, if more than fifteen (15) persons were identified by the applicant as potentially affected persons, OAQ will generally publish a notice in the local newspaper stating the decision made. OAQ will also place a copy of the notification letter (permit) in the local public library. The newspaper notice will 1) describe the proposal to open burn, 2) state the OAQ's decision, 3) provide information on how to appeal OAQ's decision, and 4) advise readers that they may view a copy of the decision letter at either the health department or the local library.

If the applicant has identified fewer than fifteen (15) potentially affected persons, they may be notified of the decision in a letter from OAQ. However, even if fewer than fifteen (15) potentially affected persons were identified by the applicant, a notice may still be published in the local newspaper, if the applicant has requested such notice on grounds they may not otherwise have been able to identify all potentially affected persons. Under those circumstances OAQ will not send individual letters to potentially affected persons.

Regardless of whether potentially affected persons were notified by way of a newspaper notification or a letter from OAQ, they will then have fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S. Mail) from the date of the receipt the notification to appeal the issuance of the variance to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. (For more information on filing an appeal see, "What if you do not agree with IDEM's final decision? How can you file an appeal?", **page 2** of this guide.)

They may also request a stay of (to block or reverse) OAQ's decision. If a stay is granted, that means that the open burning may not go forward until after the Office of Environmental Adjudication has decided on the appeal. At the time the decision is issued, OAQ also will notify the local fire and health departments by mail. In some counties, other local officials also may have requested to be notified by OAQ regarding decisions on open burning requests.

In addition to meeting state open burning requirements, persons conducting open burning also are subject to any existing local restrictions or permit requirements, which in some instances may be more stringent than state rules.

Persons with questions about open burning may contact Marilyn Kidwell, Pat Powlen, or Dave Rice of the OAQ at 317/233-5672. Persons who believe that open burning in their neighborhood is illegal, or is taking place without the required variance, may also contact this number, or submit a complaint to the IDEM Complaint Clearinghouse at 1-800-451-6027 or on the Internet at: <http://www.state.in.us/idem/pollutioncomplaints/>.

DRAFT

Water Permits

All permitting decisions regarding water quality in Indiana are made by the IDEM Office of Water Quality (OWQ). Its decision making process is based on state and federal law, and on rules adopted by the Water Pollution Control Board.

How are permits issued to wastewater dischargers, (possibly in your neighborhood) and how can you participate in the permitting process?

The OWQ wastewater discharge permits branch maintains a mailing list of Interested Parties, which currently contains approximately fifty (50) names. These organizations, trade associations, corporations, law firms, environmental groups, and some individuals have requested to be notified whenever any draft permit is public noticed, or any decision is made regarding the issuance of any and all wastewater discharge permits issued by OWQ. You may have your name, or the name of your organization (neighborhood group, church, grassroots citizen group, etc) added to this OWQ list of interested persons by calling the Permits Branch secretary at 317/232-8760.

Like air permitting applications, many water permits also require the applicant to provide an affidavit stating that adjoining property owners and occupants were, or will be, notified within ten (10) day of submitting the application. The applicant also must identify and provide the addresses of local county and city (or town) elected officials as part of the application. This information will help OWQ notify those officials about the application and the final permitting decision.

How are wastewater facility construction permits issued to persons constructing sewer lines or municipal (sanitary) or industrial wastewater pollution control equipment (possibly in your neighborhood), and how can you participate in the permitting process?

The OWQ has 90 days to complete its review of a wastewater facility construction permit application. A facility construction permit is required for the following:

- Construction of sewer main extensions (but only if the construction does not otherwise have the approval of a local publicly owned sewer authority which has been authorized by IDEM to review and grant sewer construction approvals),
- Sewer line lift stations (Wastewater collection systems usually rely on gravity flow, and to further facilitate that flow sewer lines may be designed to flow to intermittent low points, where pumps "lift" the sewage to a higher elevation where it again flows by the force of gravity to the next low point.),
- New municipal wastewater treatment plants, or modifications to existing facilities;
- New industrial wastewater treatment or pretreatment plants; or
- Modifications to existing industrial wastewater pretreatment plants discharging to publicly owned treatment works, but only if those pretreatment facilities are operating under an Industrial Wastewater

Pretreatment Permit (IWPP) issued by IDEM (and not operating under a permit issued by one of the 45 Indiana municipalities implementing EPA-approved industrial pretreatment ordinances).

(Sidebar Material?)

However, facility construction permits are not required for:

- *Storm sewers transporting only surface run off,*
- *Single-family dwelling connections to existing sanitary sewers, or*
- *Building connections which connect multi-unit residential, commercial, or industrial buildings that do not discharge toxic substances or pollutants incompatible with the system, or incapable of being treated to an acceptable quality,*
- *Approved commercial or residential septic absorption field systems,*
- *Confined feeding operations for animal production,*
- *On-site storage lagoons at land application sites which have obtained a permit from the IDEM Office of Land Quality,*
- *Ground water remediation systems utilizing either carbon absorption or air stripping as the mode of treatment, or*
- *Wells for the disposal of salt or sulfur-bearing water and waste liquids if such disposal is pursuant to a valid permit issued by the Indiana Department of Natural Resources or EPA.*
- *Existing permitted industrial wastewater treatment facilities (those with a valid NPDES permit) or existing industrial pretreatment facilities (but only those with permits issued one of the 45 Indiana municipalities implementing EPA-approved industrial pretreatment ordinances) do not need to obtain a Wastewater Facilities Construction Permit from IDEM prior making modifications to their water pollution control equipment or wastewater treatment facilities. However, if those modifications entail the installation of additional equipment for the treatment or control of any new influent pollutant or to increase treatment capacity, then the facility must file a notice of installation and a design summary with IDEM within 30 days of the commencement of operation of the modified facility.*

The only public notification associated with permitting decisions on wastewater facility construction occurs at the end of the process. There is no public notice and no public comment period prior to the permit being issued.

Persons (applicants) seeking a permit to construct a sewer or wastewater treatment facility must include with their application a list of any persons who might be affected by the permitting decision. This list of “affected parties” should also include the names and addresses of adjoining property owners, and of local elected county and city or town officials and local county department of health officers.

The applicants themselves must, of course, notify adjoining property owners and occupants within ten (10) days of submitting their application for wastewater treatment facilities. However, this requirement does not apply to sewer construction. Meanwhile, OWQ must notify local county and city (or town) officials and local county department of health officers that it has received an application for construction of a wastewater control facility within their county and city (or town). No other notifications are required until the permit is issued.

When OWQ does issue the wastewater facility construction permit, it must again provide notice to local officials and county health officers. In addition, it must notify all persons on the affected parties lists submitted as part of the permit application.

The notification provided by OWQ when the permit is issued includes information on how this permitting decision may be appealed. Petitions to appeal must be submitted in writing to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204, within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S. Mail) of the issuance of the permit. (For more information on filing an appeal see, “What if you do not agree with IDEM’s final decision? How can you file an appeal?”, page ___ of this guide.)

All appeals of wastewater construction permits are first reviewed by an environmental administrative law judge (ELJ) at the Office of Environmental Adjudication. If, within thirty (30) days of the appeal, the ELJ determines that the request for appeal was properly submitted and established a basis for a hearing, the ELJ may stay (delay the impact of) the permit, or a condition of the permit, until after the hearing. Only those persons who can demonstrate their legal standing (right to participate) may submit their comments during the appeals hearing process. After the hearing, the ELJ will issue a final judgement about whether the permit is valid, or must be reapplied for, or redone.

When OWQ issues a sewer construction permit, public notice or opportunity for public input is limited to those parties that are directly affected. However, wastewater treatment facility projects – except for those facilities which discharge their wastewater to a sewer within a municipality which carries out its own EPA-approved industrial wastewater pretreatment program – also must obtain a permit from OWQ before they may discharge their wastewater into any public sewer, or into the lakes and streams of Indiana. During that wastewater discharge permit process there is substantially more public notice, and greater opportunity for public participation.

How are permits issued to facilities that may discharge storm water and/or wastewater into the waters of the State of Indiana, and how can you participate in the permitting process?

The federal Clean Water Act requires that all persons discharging pollutants from a point source (such as a channel or pipe) into surface streams and lakes, or into storm sewers which are not connected to publicly owned treatment works (POTWs) must have a National Pollutant Discharge Elimination System (NPDES) permit. OWQ issues these permits to industrial facilities, municipalities, federal and state owned facilities (such as prisons or park facilities), mobile home parks, drinking water treatment facilities, coal mines, quarries, construction sites, and other point-source dischargers. The NPDES permits regulate the discharges of storm water and various types of wastewater which may be generated from a variety of sources. These discharges may or may not require treatment in order to meet the terms and conditions of the NPDES permit.

Industrial facilities which discharge into sewer systems which are connected to POTWs may be required to obtain an Industrial Wastewater Pretreatment permit depending upon the types of wastewater that are discharged.

General NPDES (National Pollutant Discharge Elimination System) Permits

As was discussed in Part 4, on page ___, some of the NPDES permits (including stormwater runoff permits, some cooling water permits, and discharges from quarries, coal mines and certain petroleum-related activities) issued by OWQ are general permits. The public notice procedure for NPDES general permits simply requires applicants to publish a notice in a local newspaper of general circulation to identify themselves, the location of the proposed project, and the stream receiving the discharge, and to describe the proposed activity and permit type.

There is no formal 30-day comment period for general permits, since the opportunity for public comment already occurred when the rule establishing the general permit was originally adopted, perhaps years before. (However, although the IDEM Office of Water Quality (OWQ) does not solicit public comment for general permits, that does not mean that people cannot comment. Indeed, OWQ will consider useful information it may received.)

The IDEM Office of Water Quality (OWQ) has 150 days to make a permitting decision regarding a new general NPDES permit (Rules 7 through Rule 12). IDEM issues letters notifying applicants of general permit coverage on about the 15th of each month. Notification also is sent to the appropriate state agencies, to persons on OWQ's mailing lists for the affected county, to all persons who were listed on the Potentially Affected Persons form, to the county health department, and anyone else who has expressed a particular interest in any of the general permit approvals being public noticed. The monthly list of general permit approvals also is posted on the OWQ website. The approval to operate under the general permit becomes effective 18 days later, after affected parties have had the opportunity to appeal these approvals.

Persons who feel that they are potentially affected by the issuance of the general permit do have the right to appeal approvals to operate under a general permit. Appeals must be submitted, in writing, to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. Petitions for appeal must be filed fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of the date that OWQ makes public its monthly list of approvals to operate under a general permit. For additional information on filing an appeal, see “What if you do not agree with IDEM’s final decision? How can you file an appeal?” on page ___ of this guide.

However, general permits for stormwater runoff from construction sites (Rule 5) or from industrial facilities (Rule 6) become effective as soon as OWQ receives the application (often referred to as the Notice of Intent), because these are permits-by-rule. Thus, failure to provide all the information required by the application is considered a violation of the rule, rather than as an incomplete application.

Individual NPDES (National Pollutant Discharge Elimination System) Permits

Any discharge activity not eligible for a NPDES general permit (or permit-by-rule) requires an individual NPDES permit, for which there are greater opportunities for public participation. OWQ has 180 days to issue a new minor individual NPDES permit, and 270 days to issue a new major individual NPDES permit. Whether a permit is minor or

major can depend on the amount of the discharge, or may be determined based on the pollutants in the discharge. There are no statutory time frames for the processing of renewals or modifications of NPDES permits. There may be several public notices and comment periods associated with issuing an NPDES permit.

Persons seeking an individual NPDES discharge permit are required to submit an application which includes a list of affected parties and local area officials and an affidavit confirming that adjoining property owners have been notified that an application has been submitted. As required by law, OWQ then notifies local county and city officials of the receipt of the application.

Once OWQ has prepared a draft permit, a public notice is published in the local newspaper of widest general circulation in the county within which the proposed activity will occur. The public notice describes the proposed activity, the type of permit being sought, and identifies who is seeking the permit. It advises where the draft permit may be viewed (at the county health department or at OWQ and in a few instances these have been placed on the Internet) and identifies an OWQ contact person (the NPDES permit manager and his or her phone number) who can provide additional information. The notice also states that the public may submit comments during the 30 calendar days beginning the day that the notice appears in the newspaper. If OWQ anticipates there will be significant public interest in a particular permit application, then it may automatically schedule a public meeting during the public comment period and include the date, time, and location of the meeting in the public notice.

Sidebar:

The draft individual NPDES discharge permit must include:

- 1) all operating conditions, limitations, or requirements,*
- 2) all discharge limits*
- 3) all compliance schedules (timetables for meeting and maintaining the limits of the permit),*
and
- 4) all monitoring (sampling), record keeping, and reporting (to IDEM) requirements.*

If a public meeting or a public hearing was not announced as part of the public notice of the draft NPDES permit, then any member of the public may request that one be held. If the OWQ agrees to the request for a meeting or hearing, it will place a second public notice in the same newspaper which will provide the date, time, and location of the public meeting or hearing. It is also standard practice to extend the comment period a few additional days after the hearing (generally, but not always, for ten (10) additional days), although OWQ is not required to do so. If any comments submitted during the public comment period(s) appears to raise new questions about a draft permit, OWQ may prepare a new draft permit, or may reopen or extend the public comment period.

After the close of the public comment period (including any public hearings) the OWQ will issue a final permitting decision. A notice of decision briefly summarizing the permit, or the reason why the permit was denied, is sent to all persons on the list of affected parties or the e-mail notification list (lists maintained by OWQ which includes interested citizens who have contacted the OWQ NPDES secretary/public notice clerk asking to be notified of the issuance of any NPDES permits) and any person who added

his or her name to a notification list while attending a OWQ-sponsored public meeting or public hearing concerning a proposed permit. If a permit was issued, this notice of decision will also include information on where the permit may be viewed, and how to file an appeal with an Environmental Law Judge.

Appeals must be submitted in writing to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. Petitions for appeal must be filed within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of the date that OWQ issued the NPDES permit. For additional information on filing an appeal, see “What if you do not agree with IDEM’s final decision? How can you file an appeal?,” on **page __** of this guide.

Sidebar:

The OWQ Permits Branch maintains a list of citizens, or additional affected parties, who have requested to be notified regarding every permit decision. To have your name added to the list, please contact the OWQ NPDES secretary/public notice clerk at 317/232-8760.

In addition, if a permit is issued, a copy of the permit will be sent to the applicant, to the U.S. EPA (majors only), to the county health department of the county where the facility is located, to the certified operator of the facility, to anyone who submitted written comments during the public comment period, and to any other person who requested to be provided with a copy of the permit.

Variances, Site-specific Limits, and Alternate Mixing Zone Requests

The “effluent limits” of an individual NPDES discharge permit are the levels to which pollutants must be reduced prior to discharge of the wastewater into the lakes and streams of the state. Permits generally require that pollutant levels should be reduced either: 1) to levels that ensure that no harm will occur to humans, wildlife, or aquatic life in the receiving stream (even during dry weather periods of low water flow, or low lake levels, or 2) to levels reached using the best available treatment technologies economically feasible, whichever of these levels is the most protective.

If the applicant believes that the discharge limits described in the draft permit are too difficult for the applicant to meet based on technological or financial reasons, then the NPDES regulations do provide a few mechanisms for the applicant to seek less stringent limits. The applicant can submit a request for a variance, a request for site-specific effluent limits, or a request for use of an alternate mixing zone for the calculation of the limits. If the permit applicant submits an application to OWQ for one of these or if the applicant is required by OWQ to submit an antidegradation demonstration (see next section), then the OWQ is required to public notice the receipt of the application(s). Generally this public notice allows for a 30-day comment period. During this special comment period, if any person requests a public meeting, the OWQ is required to hold a public meeting. The rules only require a minimum 10-day advanced notice of such meeting.

A variance request can be submitted at any time during the period beginning on the date an application is submitted for the issuance, reissuance, or modification of a NPDES permit and ending ninety (90) days following the effective date of the new, renewed, or modified NPDES permit, when the water quality-based effluent limit for the substance will be or is more restrictive than the limit in the existing permit. However, new

dischargers in the Great Lakes basin cannot apply for a variance. If a valid variance request is submitted prior to the issuance of the NPDES permit, OWQ must make a determination on the variance request before the NPDES permit can be issued. If the variance request is submitted after the permit is issued, then the permittee must appeal the NPDES permit and must file the variance request as part of that appeal. IDEM is required to public notice the receipt of a complete variance request.

After OWQ reviews the completed variance application, it will public notice OWQ's tentative determination (or preliminary finding) on the variance request. The public notice also will describe any effects the variance may have on the use of the receiving waterbody if the variance is granted, and declare another 30-day public comment period during which the public may comment on the tentative determination to grant or deny the variance request. During this 30-day comment period, the public will also have the right to request a public hearing.

If OWQ decides to hold a public hearing which was requested during the public comment period for the variance request, there must be another public notice, at least 30 days in advance of the public hearing, announcing when and where the hearing will be held. Public comment also will be accepted at the hearing and during the 30-day period prior to the hearing. It is also standard practice to extend the comment period a few additional days after the hearing, although OWQ is not required to do so.

Antidegradation

There are specific antidegradation implementation procedures, which have been developed for facilities that are located in the Great Lakes basins. (Please note that the OWQ is currently in the process of developing statewide antidegradation implementation procedures through the Triennial Review of the Indiana Water Quality Standards.) Any facility with a proposed new or increased discharge of a pollutant either to a high quality water or to an Outstanding State Resource Water is subject to the antidegradation rules. The applicant will most likely be required to submit an antidegradation demonstration that must be approved by OWQ before the construction permit or the NPDES permit can be issued. There are a limited number of circumstances that are itemized in the regulations by which a facility can seek an exception to the antidegradation requirements; however, the applicant must submit an application to show that it qualifies for the exception. The receipt of these applications must be public noticed by OWQ.

How are permits issued for the construction of drinking water facilities, and how can you participate in the permitting process?

General Permits

The Drinking Water Construction Permit program has a general permit-by-rule under which water main extensions may be constructed. It requires that the applicant notify the Office of Water Quality (OWQ) with the name and location of the project and the names of the responsible parties (developers, engineers, water company officials, and other

responsible persons) at least 30 days before the beginning of construction. The applicant also must provide to OWQ the construction schedule for the project at least 10 days before the start of construction. There is no public notice or public participation process associated with the water main extension permit-by-rule, as the opportunity for public comment occurred during the development and adoption of the rule (see, What are “general permits,” and how do they protect the environment?, Part 4, page ____).

Individual Permit

The drinking water branch issues individual construction permits for water mains, wells, pumps, chemical additions, and storage facilities, or for any combinations of these features, including complete water treatment plants. Regardless of the type of proposed project, the application for a Drinking Water Construction Permit requires the applicant to list all Potentially Impacted Parties (PIPs); persons who may be affected by the issuance of a permit. Failure by the applicant to identify all PIPs can lead to the voiding of a permit decision.

Once the PIPs are identified, meeting the public notice requirements associated with issuing a permit are met in one of two ways, depending on the number of PIPS listed by the applicant. If there are ten (10) or more PIPs a notice may be published in a local newspaper of general circulation. The notice must describe the proposed project and location and allow a thirty (30) day public comment period. OWQ will respond to any comments when the permit decision is issued.

On the other hand, if there are fewer than ten (10) PIPs, those individuals may instead be notified by OWQ when it issues a decision regarding the permit. That notice of decision includes information on where to view the pending permit and how to appeal IDEM’s decision. The PIPs and the general public then have fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) to consider the permit and to file an appeal to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. For additional information on filing an appeal, see “What if you do not agree with IDEM’s final decision? How can you file an appeal?” page ____ of this guide.

Public Notice Regarding: Certification of Demonstration of Capacity

All new community (cities, towns, private water companies, and mobile home parks) or non-transient non-community (schools, industries, and motels) public water supply systems beginning operation after October 1, 1999, must obtain a Certification of Demonstration of Capacity prior to submitting an application for a Drinking Water Construction Permit. To obtain this certification, the proposed new system must demonstrate to the IDEM Office of Water Quality (OWQ) that it has the financial, technical, and managerial capacity to construct, maintain, and operate a public drinking water system capable of meeting national Safe Drinking Water Act standards. This requires that the proposed new public water supply system submit to OWQ a “Water System Management Plan,” and a list of Potentially Impacted Parties (PIPs).

All PIPs will be notified by U.S. mail of OWQ's decision. A public notice regarding the decision also will be published in a local newspaper. The notification letter to PIPs and the newspaper notice must identify the system and its location, provide its Public Water System Identification Number, and describe who will be served by the system. If a certification is issued, the notice also will describe where a copy of the certification may be viewed (at the affected county health department or at the OWQ Drinking Water Branch office located at 2525 North Shadeland Avenue, Indianapolis, Indiana 46219). The notice also will advise how to appeal the OWQ's decision to issue or deny the certification. Appeals must be filed with the Office of Environmental Adjudication, ISTA Building, Suite 618, 150 West Market Street, Indianapolis, Indiana 46204, within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S. Mail) of the decision. For additional information on filing an appeal, see "What if you do not agree with IDEM's final decision? How can you file an appeal?" on page ___ of this guide.

What is IDEM's role in regulating construction in a wetland, and what opportunities exist for public participation?

Any person who wishes to place fill materials, excavate or dredge, or mechanically clear (use heavy equipment) within a wetland, lake, river, or stream must first apply to the U.S. Army Corps of Engineers (USACE) for a Section 404 permit. If the Corps of Engineers determines that a wetlands (Section 404) permit is needed, then the applicant also must obtain a Section 401 Water Quality Certification from the IDEM Office of Water Quality (OWQ).

The U.S. Fish and Wildlife Service has created National Wetland Inventory maps which identify the general location of wetlands. Such maps may be purchased from the Indiana Department of Natural Resources at 317/232-4180. However, those maps are intended for general planning purposes, and may not be used to determine that a specific tract of land is, or is not, a wetland subject to wetland (Section 404) and water quality (Section 401) regulation. The only way to determine whether a specific tract of land should be officially designated as a wetland is to have an onsite determination made using the U.S. Army Corps of Engineers (USACE) 1987 Wetlands Delineation Manual. For further information on field identification of wetland resources, you may contact the USACE at (502) 582-5607 (the Louisville USACE office, which covers most of Indiana) or at (313)226-6828 (the Detroit USACE office, which covers that portion of Northern Indiana that include the Iroquois, Grand Calumet, Little Calumet, and Maumee Rivers).

Public notice for water quality certifications can take two different forms. If the project requires an individual Section 404 wetlands permit from the U.S. Corps of Engineers (USACE), then the Corps will issue a joint public notice which will include information and provide points of contact regarding both the Corps wetlands permit, and the IDEM OWQ water quality certification.

In addition to Section 404 individual wetland permits, the U.S. Corps of Engineers (USACE) also authorizes certain activities under its "nationwide" and "regional" permits. Like IDEM general permits, the USACE's nationwide and regional permits are designed

to expedite approval process for projects which, individually and cumulatively, have little or no adverse effect on the environment. The USACE does not post a public notice for nationwide and regional permits because the activities allowed under these types of permits already have been authorized.

However, the IDEM Office of Water Quality will publish a public notice regarding the water quality certification associated with a U.S. Army Corps of Engineers (USACE) nationwide or general permit. OWQ's notice will announce the receipt of a complete application for a water quality certification, and will include basic information identifying the applicant, the applicant's consultant, location of the project, effects on water bodies, a basic project description including a map, dates of the comment period, an indication that interested parties may request a public meeting, a description of the authority under which the notice is issued, limitations the agency has in considering public comments, contact for the agency project manager, an address for submitting comments, the U.S. Army Corps of Engineers identification number (when available), and IDEM identification numbers that provide some basic information about the project.

The standard comment period is 21 days, although it can be extended for a variety of reasons, including the scheduling of a public meeting or receipt of significant supplemental information that affects the scope of the project (adds or deletes impacts). A public meeting or a public hearing may be requested by anyone and if OWQ decides to hold such a meeting or hearing, it will provide approximately 20 days notice prior to a public meeting.

OWQ typically schedules a site investigation with the applicant during the application review process, and usually will issue a decision with sixty (60) days of receiving a complete application. The certification, like all IDEM-issued environmental permits, may be appealed by any adversely affected or interested party. Appeals must be filed with the Office of Environmental Adjudication, ISTA Building, Suite 618, 150 West Market Street, Indianapolis, Indiana 46204, within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S. Mail) of the decision. For additional information on filing an appeal, see "What if you do not agree with IDEM's final decision? How can you file an appeal?," on page ___ of this guide.

Waste Disposal Permits

Solid Waste Permits

What types of permits are issued (possibly in your neighborhood) to recycling centers, transfer stations, landfills, incinerators and other facilities used to dispose of garbage and other solid wastes?

Solid waste can be a solid, a liquid, or a gas (in a container). The IDEM Office of Land Quality (OLQ) issues several different types of permits required for various types of solid waste.

Like the application for many IDEM-issued permits, these types of solid waste permitting applications require the applicant to provide an affidavit stating that adjoining property owners and occupants were, or will be, notified within ten (10) day of submitting the application. The applicant also must identify and provide the addresses of local county and city (or town) elected officials as part of the application. This information will help the IDEM Office of Land Quality (OLQ) to notify those officials about the application and the final permitting decision.

The types of waste disposal permits issued by the IDEM OLQ include permits for land disposal facilities, waste processing facilities, or permit modifications to either of these types of facilities. For example:

Solid Waste Land Disposal Facilities (three [3] types):

- 1) Municipal Solid Waste Landfills (MSWLFs)
 - MSWLFs generally accept most commercial and residential wastes (all the materials you leave out for curbside pickup), construction or demolition debris, most non-hazardous industrial wastes, and yard wastes of grass clippings and limbs less than three (3) feet in length.
- 2) Construction/Demolition Debris Landfills (C/D Landfills)
 - C/D Landfills generally may only accept construction or demolition debris. C/D Landfills may accept asbestos products that are nonfriable, (unlikely to be crumbled and therefore not as likely to become airborne; such as asbestos tiles or shingles), but may not accept friable asbestos wastes (loose, shredded, or easily pulverized asbestos containing products that could become airborne) even if those wastes are properly bundled. C/D Landfills also may accept architectural elements (such as moldings, doors, trim, radiators, shelves, gutters, windows, cabinets, etc.) coated with lead-based paint, but may not accept lead-based paint wastes (such as lead-based paint dust or sludge) generated by lead-based paint removal projects.
- 3) Restricted Waste Sites (RWS); Types I, II, or III
 - Industrial waste landfills that are limited to accepting only very limited types of non-hazardous industrial waste, usually the wastes generated by a single type of industrial activity, often from a single facility.

Solid Waste Processing Facilities (two [2] types):

1) Municipal Solid Waste Incinerators

- Accept most commercial and residential wastes.

2) Municipal Solid Waste Transfer Stations

- Serve as collection points that sort wastes (and also may remove recyclable materials) and combine small loads for transportation to landfills

Permit Modifications

Major Modification to a Solid Waste Disposal Facility

- A change that increases the capacity of a solid waste land disposal or processing facility by the lesser of 10% or 500,000 cubic yards, or changes a land disposal facility's solid waste boundary by more than one acre.

Minor Modification to a Solid Waste Disposal Facility

- A change that is not a major modification; that is, a change that does not increase the capacity of a solid waste land disposal or processing facility by the lesser of 10% or 500,000 cubic yards, or change a land disposal facility's solid waste boundary by more than one acre. On the other hand, a Minor Permit Modification would not be required for insignificant facility modifications that either do not effect the environmental protection at the facility or improve the facility's operation without significantly altering its permit such as the relocation of facility waste hauling roads, office buildings, or collection containers, changes in the sequences of filling permitted areas, installation of temporary sediment control or leachate control systems, installation of additional methane vents, or the horizontal replacement of monitoring wells of equal depth by less than ten feet.

OLQ is required to use one of three (3) different public notice processes, depending on the type of permit or the level of modification approval being requested by the applicant. The greater the potential environmental impact of a permit or modification, the more comprehensive the application, the more thorough the application review process, and the greater the opportunity for public participation.

The three (3) different types of public notice processes are for:

1) Applications for:

a) A permits for a:

- i) Municipal Solid Waste Landfill (MSWLF),
- ii) Construction/Demolition Landfill (C/D Landfill),
- iii) Restricted Waste Site (RWS), or
- iv) Solid waste incinerator, or

b) A major modification (change) to any one of these types of facilities.

These permitting processes provided the greatest opportunity for public input.

2) Applications for:

- a) A minor modification to any solid waste disposal or processing facility, or
- b) A permit for air emissions from a MSWLF (municipal solid waste landfill).

- 3) Applications for a permit for a Transfer Station (including those with a Recycling Center). These permits have less potential environmental impact, and a less extensive public notice process.

How can you participate in the process when IDEM is considering issuing a permit for a solid waste landfill or incinerator, or a major modification to such a facility?

OLQ has three hundred and sixty-five (365) days to issue a permitting decision on a MSWLF, C/D Landfill, RWS, municipal waste incinerator, or a major modification to an incinerator or any of these types of land disposal facilities. At the time the application is first received by OLQ the adjoining property owners are notified by the applicant. Local county and city or town officials are notified by OLQ.

Once the application for a solid waste disposal facility, or a major modification to an existing solid waste disposal facility, is deemed to be a completed application – that is, OLQ has determined that all the information asked for on the application has been provided by the applicant – OLQ will publish a public notice in a newspaper of general circulation in the county in which the facility is located, or is proposed to be located. If there is a second newspaper of general circulation within the affected county, OLQ will publish the public notice in both newspapers. If the facility is located within one (1) mile of the boundary of an adjacent county, a public notice also will be published in a newspaper of general circulation in which county as well. In addition, OLQ will place the public notice on its Internet web site.

The required public notice will describe the proposed project. It also will announce the beginning of a thirty (30) day public comment period, and will provide instructions on how you may submit comments. In addition, the public notice will list a contact person at OLQ who can provide additional information about the permitting request. It also will advise you that a copy of the permit application may be viewed in the IDEM file room (11th Floor, Indiana Government Center North, 100 N. Senate Avenue, Indianapolis) and describe how you may request a public hearing on the permitting request. A public hearing is automatically scheduled if the applicant is seeking a permit for a new solid waste land disposal facility, a new incinerator or for a major modification to a solid waste land disposal facility or incinerator.

If a public hearing is automatically scheduled, the date, time, and location of that hearing is announced in the public notice. A public hearing is not automatically scheduled for permit renewals. If a public hearing is not automatically scheduled, but is held at the request of a citizen, OLQ will post a separate public notice announcing the hearing in the newspaper, or two primary newspapers, of general circulation in the affected county at least ten (10) days in advance of the hearing. If a public hearing is held (regardless of whether it was scheduled automatically, or held upon a citizen request) OLQ will record and accept verbal public comments made at the hearing. OLQ will also accept public comments for ten (10) additional days beyond the date of any hearing.

During the public comment period, OLQ also will receive comments regarding the applicant's Good Character disclosure statement. (The Good Character disclosure statement should describe any prior legal proceedings, judgements, or convictions. The applicant's experience managing similar wastes, any prior complaints that resulted in fines and any record of violating state and federal law or endangering public health should also be made known, with descriptive accounts of any such transgressions. OLQ may deny a permit to any applicant with a documented and substantial record of convictions, repeated violations, or intentional misrepresentation.)

In addition to any public hearings held by OLQ, applicants seeking a permit for a new solid waste land disposal facility or to make modifications to an existing solid waste land disposal facility also must themselves conduct a public meeting. That public meeting must be held in the affected county within sixty (60) days of when the permit application is declared complete by OLQ. The applicant also must publish a public notice announcing the meeting in a newspaper, or newspapers, of general circulation within the affected county at least ten (10) days before the meeting. That public notice must list the date, time, and exact place of the meeting and must appear in a section of the paper other than in the classified ads or the legal notices sections of the newspaper. At the public meeting, the applicant must 1) present a description of the location of the proposed facility or major modification, 2) indicate where a copy of the application may be viewed, 3) describe any design alternatives, 4) clarify that OLQ is accepting public comment and describe how to submit comments to OLQ, 5) provide the public with a fact sheet on the project that has been prepared by OLQ, and 6) offer opportunities for questions and comments.

After the public meetings and hearings have been held, and the public comment period has ended, OLQ must issue a permitting decision within the legally allowable time period for reviewing permit applications (For new land solid waste disposal facilities, new incinerators, or major modifications to either of these facilities, the time allotted is three hundred and sixty-five (365) days.) The final decision is announced by OLQ in a Notice of Decision.

The Notice of Decision is mailed to the applicant, local county and city or town officials, and everyone on the interested parties list, as well as to all persons who submitted public comments and any other persons who requested to be placed on the mailing list for the Notice of Decision. A copy of the actual permitting decision (the permit) is sent to the applicant. A copy of the permit decision also is placed in the local library by OLQ and also is posted on the Internet (at http://www.state.in.us/idem/olq/permits/permit_notices/index.html).

The Notice of Decision summarizes the permit, and advises that it may be viewed at the local library. A response to the comments received during the public comment period also is included with the Notice of Decision, as well as information on how OLQ's permitting decision may be appealed to the Office of Environmental Adjudication within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S. Mail) of receipt of the Notice of Decision. Petitions to appeal must be submitted in writing to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618,

Indianapolis, IN 46204. For additional information on filing an appeal, see “What if you do not agree with IDEM’s final decision? How can you file an appeal?” on **page __** of this guide.

How can you participate in the process when IDEM is considering issuing a minor modification to an existing solid waste incinerator or land disposal facility, a major or minor modification to an existing transfer station, or a permit for air emissions from a municipal solid waste land fill?

OLQ has one hundred and eighty (180) days to consider applications for permits or major modifications to transfer stations or recycling centers, and ninety (90) days to consider applications for minor modifications to any type of solid waste processing or disposal facility. As with most other IDEM permits, the applicant must notify adjoining property owners. OLQ will notify local county and city or town officials that an application for this type of permitting approval has been received. The applicant must include in its application a list of affected parties; all adjoining property owners and occupants, as well as all property owners who own land within one-half (½) mile of the solid waste boundary (the boundary line within which solid waste may be disposed of).

Prior to the distribution by OLQ of the Notice of Decision announcing OLQ’s final permitting decision on these major or minor modification or air emissions permits, there is no public notice given for these types of requests except the notice given to adjoining property owners and local officials. However, if there is substantial public interest, or citizens file a petition, a formal public hearing will be held. Before the hearing, a public notice would be published in the primary newspaper, or newspapers, of general circulation within the affected county to announce the date, time, and location of the hearing. The newspaper notice also would announce that there would be a thirty (30) day public comment period. OLQ would make a fact sheet available at the hearing, where both written and recorded verbal comments would be accepted. The applicant would be invited, but not required to attend the hearing, and at OLQ’s discretion, a more informal discussion or question and answer period could be held after the formal hearing.

When the final permitting decision is made by OLQ, a Notice of Decision will be mailed to the applicant, local area officials, all interested parties, anyone who otherwise requested to be notified, and to anyone who provided public comment if a public hearing and public comment period were held. Copies of the permit decision are provided to the applicant, and also placed in the local library of the affected county and posted on the Indiana Department of Environmental Management’s web site. The Notice of Decision will summarize the permit or modification and advise that it may be viewed at the library. If a hearing and public comment period were held, a summary of responses to comments also will be included. The Notice of Decision also will include information on how OLQ’s permitting decision may be appealed to the Office of Environmental Adjudication within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of the decision. Petitions to appeal must be submitted in writing to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618,

Indianapolis, IN 46204. For additional information on filing an appeal, see “What if you do not agree with IDEM’s final decision? How can you file an appeal?” on page __ of this guide.

How can you participate in the process when IDEM is considering issuing a permit for a Transfer Station (including those with an associated recycling center)?

Some transfer stations may include recycling activities. However, a solid waste processing facility is not considered to be a “recycling center” unless ninety percent (90%) of the material handled at the facility maybe delivered back to manufacturing companies for reuse without any further processing. Such recycling centers are not required to have a permit (see 329 IAC 11-2-47(b)(3)).

As with most other IDEM permits, the applicant must notify adjoining property owners. OLQ will notify local county and city or town officials that an application for this type of permitting approval has been received. OLQ has one hundred and eighty (180) days to consider applications for transfer station permits.

When a permit application for a new solid waste processing facility or transfer station or major permit modification of one of these permits is declared complete by the Office of Land Quality, a Notice of Receipt will be published by the Office of Land Quality. OLQ will publish the public notice in a newspaper of general circulation in the county in which the facility is located, or is proposed to be located. If there is a second newspaper of general circulation within the affected county, OLQ will publish the public notice in both newspapers. If the facility is located within one (1) mile of the boundary of an adjacent county, a public notice also will be published in a newspaper of general circulation in that county as well. In addition, OLQ will place the public notice on its Internet web site.

The public notice will describe the proposed project. It also will announce the beginning of a thirty (30) day public comment period, and will provide instructions on how you may submit comments. In addition, the public notice will list a contact person at OLQ who can provide additional information about the permitting request. It also will advise you that a copy of the permit application may be viewed in the IDEM file room (11th Floor, Indiana Government Center North, 100 N. Senate Avenue, Indianapolis) and describe how you may request a public hearing on the permitting request.

When the permit decision is reached, OLQ will issue a Notice of Decision that summarizes the permit, and advises that it may be viewed at the local library. A response to the comments received during the public comment period also is included with the Notice of Decision, as well as information on how OLQ’s permitting decision may be appealed to the Office of Environmental Adjudication within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of receipt of the Notice of Decision. Petitions to appeal must be submitted in writing to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. For additional information on filing an appeal, see “What if you

do not agree with IDEM's final decision? How can you file an appeal?," on page ___ of this guide.

Other Types of Solid Waste Permits or Approvals Issued by OLQ

What other types of permits are issued by the IDEM OLQ for handling, processing, treating, re-using, or disposing of non-hazardous solid waste?

In addition to permits for landfills, incinerators, and other solid waste processing or disposal facilities that handle or accept large quantities of a wide variety of solid wastes, the OLQ also issues other permits and approvals that address more specific types of waste such as sludge, certain types of wastewater, animal waste, vegetative wastes, and waste tires. Although some of these types of waste also are accepted at landfills, sometimes as daily cover or as part of a final cover, in other instances there may be limits, or even bans on the disposal these wastes in landfills.

How can you participate in the process when IDEM is considering issuing permit to land apply or market certain biodegradable sludges or biosolids?

The IDEM Office of Land Quality (OLQ) issues permits allowing certain biodegradable waste materials such as some industrial waste products, and biosolids from wastewater treatment processes, which have value as a source of soil enrichment or plant nutrient to be applied to the land. Once any disease-causing organisms are reduced to acceptable levels and the quality of the material is found to be acceptable, such materials may be applied to agricultural lands, development sites, or reclamation projects. IDEM issues two types of permits for land application. Non Site-Specific permits authorize the application of high quality biosolids and industrial waste products on any agricultural land within given counties, but do not specify any particular site. Site-Specific land application permits list those specific sites on which materials may be applied. Persons wishing to market or distribute biosolids and industrial waste products must first obtain a Marketing and Distribution Permit from OLQ. Similarly, the land application of pollutant-bearing water (domestic wastewater, industrial process wastewater, or industrial storm water) also requires a permit. Construction of off-site storage structures also are regulated by the land application program and may require either a notification or an approval to construct through submission of a construction permit application.

The applicant must notify adjoining property owners and occupants that it has applied for a permit if the sites where material is to be land applied are identified. OLQ must notify affected local area county and city or town officials that an application has been received. OLQ also notifies the county health department, planning commission and solid waste management district. The applicant must also provide to OLQ a list of other potentially affected parties such as persons whose property could be affected, or other potentially affected persons. There are no specific deadlines for the review of applications for Land Application Permits. However, permitting decisions generally are issued within 180 days.

When an application is received by OLQ for the land application or distribution of a waste material, a copy of the application is provided to the public library in each affected county. OLQ publishes a public notice in the newspaper, or newspapers, with the largest daily circulation in each affected county, or counties. (Permits to widely distribute waste material are public noticed in the Indianapolis Star, the newspaper with the largest circulation in Marion County). The public notice describes the type of permit being sought, identifies the locations of any listed sites where the waste material will be land applied, advises that the application may be viewed in the IDEM file room or at the local library, announces that there is a thirty (30) day public comment period, lists a contact person with the applicant, provides information on how to submit comments, and explains how to request a public hearing.

Public meetings are neither required nor routinely held. However, OLQ staff will meet informally with any individual or small group making such a request. If a public hearing is requested, it may be held at OLQ's discretion. If a hearing is held, it will be preceded by a second thirty (30) day public comment period that may be extended to ten (10) days beyond the date of the hearing. At a formal hearing, there is no back-and-forth dialogue, and no questions will be answered by OLQ. OLQ will provide a fact sheet and information on where to send written comments. All verbal comments will be recorded.

Once a permitting decision is made OLQ will distribute a Notice of Decision to potentially affected parties. If a permit is issued, copies will be provided to the applicant, the operator, the county health department, the county planning commission, the solid waste district, each participating land owner, the Allen County Public Library (as a result of a long standing request by an environmental group), to any consultants and contractors listed on the application, and any persons who received an individual response to a public comment. A copy of the permit also will be posted on the OLQ web site.

The Notice of Decision, summarizing the permit and advising that a copy of the permit may be viewed at the IDEM file room or at the local county health department, will be sent to all affected parties identified by the applicant. The Notice of Decision also will explain how OLQ's permitting decision may be appealed to the Office of Environmental Adjudication within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of the decision. Petitions to appeal must be submitted in writing to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. For additional information on filing an appeal, see "What if you do not agree with IDEM's final decision? How can you file an appeal?," on page __ of this guide.

How can you participate in the process when IDEM is considering issuing a permit to land apply sanitary wastewater from septic systems or portable sanitary units?

Sanitary wastewater from septic systems, holding tanks, portable toilets, and other facilities not connected to a sanitary sewer system generally is either trucked to private or

municipal wastewater treatment plants or disposed of by land applying it as a fertilizer. OLQ issues permits to the businesses that haul wastewater. Each truck also must be licensed by OLQ. Wastewater disposal permits also are issued for the sites where it is land applied and for any on-site wastewater storage facilities. Before it is land applied, the wastewater is treated to reduce the level of disease-causing organisms.

There are no time requirements OLQ must meet to issue business permits, vehicle licenses or storage permits, but half of all business permits and vehicle licenses are issued within 21 days. OLQ is allowed one hundred and eighty (180) days to issue a land application site permit. All permits for the management of septic or sanitary wastewater expire on February 28 of each year, except that the storage permit is valid for as long as the business is in operation and in compliance.

When OLQ receives an application for a permit for a wastewater hauling and disposal business, a land application site, or an on-site storage facility OLQ notifies local county and city or town officials, the local sheriff's department, and the county health department that the application has been received. The applicant is required to notify adjoining property owners and occupants of any application for a new permit, but permit renewals do not require neighbor notification. The applicant also must list in the application any other persons who might be considered potentially affected parties; competitors, other persons whose property could be affected, or other potentially affected persons.

There are no public notice requirements or any public comment period for these types of permits. There also are no public meetings or public hearings required. However, the permit writer may meet informally with anyone wishing to view the application or learn more about the permit request. The application also may be viewed at the IDEM file room, or at the local county health department of the affected county.

If a permit is issued, a copy will be sent to the applicant, and copies also will be sent to local county officials (county commissioners), the county sheriff, and the county board of health. Upon request, the county planning office also will be provided with a copy. A Notice of Decision will be sent to the adjoining property owners, the affected parties, and to any person who has requested to be on the wastewater disposal program's permit notification mailing list. The Notice of Decision will summarize the permit, advising that it may be viewed at the IDEM file room or at the local health department of the affected county, and provide information on how OLQ's permitting decision may be appealed to the Office of Environmental Adjudication within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of the permitting decision. Petitions to appeal must be submitted in writing to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. For additional information on filing an appeal, see "What if you do not agree with IDEM's final decision? How can you file an appeal?," on page ___ of this guide.

How can you participate in the process when IDEM is considering issuing approvals for confined animal feeding operations?

Any new animal feeding operation designed to confine at least 300 cattle, 600 swine or sheep, or 30,000 fowl in lots, pens, ponds, sheds or buildings where they are fed and maintained for at least forty-five (45) days during any year, must first be approved by the OLQ before construction and operation. Approvals are also required for existing operations expanding to confine more than the above mentioned numbers of animals. In addition small farms who have caused water quality violations are mandated to seek a state approval.

The central focus of a confined feeding operation approval process is to assure that the storage structures are designed to be watertight and that the farm has access to adequate acreage to accommodate manure recycling at a rate compatible with crop nutrient demand and soil fertility levels. One of the required components of a submitted application is the manure management plan, which describes manure treatment and control facilities, addresses soil and manure testing procedures, and establishes manure application areas. The manure management plan must be provided to OLQ for its review at least one (1) time every five (5) years. OLQ must act upon requests for confined feeding approvals within ninety (90) days.

Any farmer applying for a “first time” confined feeding approval for an existing or new facility must notify adjoining land owners and occupants, as well as the county commissioners’ office, within ten days of submitting an application. Applicants for confined feeding approvals also must submit to OLQ, as part of their applications, a list of affected parties that, at minimum, must include all adjoining property owners and occupants notified by the applicant, as well as the county commissioners.

If significant interest is generated by the applicant’s notice to adjoining property owners and occupants, OLQ will place a copy of the application in the nearest public library and publish a public notice in a local newspaper with circulation in the area where the farm is located. That notice will describe the proposed confined feeding project and location, announce that there will be a thirty (30) day public comment period, mention that the application may be viewed at the library, name an OLQ contact person who can provide additional information, and advise how to submit comments or to request a public meeting or hearing.

If the request is granted for a public meeting, an informational meeting will be held, at which OLQ will discuss the proposal. If the request is granted for a public hearing, all testimony at the hearing will be recorded. At any public meeting or hearing, OLQ will present a briefing on its program and on the specific proposed application. The public comment period also may be extended, especially if it is alleged that those affected by the project were unaware of the comment period, and want more time to comment.

Once OLQ has reviewed the application, and held any public meetings, hearings, or comment periods it deems necessary, a decision will be made. If a confined feeding

approval is granted OLQ will notify the county commissioners and the county health department of the affected county. It also will notify the nearest USDA Natural Resources Conservation Service office and the city or town officials of any affected city or town. In addition, OLQ will notify all the persons on the list of affected parties submitted by the applicant and any persons who may have submitted comments or requested to be notified of OLQ's decision. Those persons who are notified also will be advised regarding how they may appeal OLQ's decision. Petitions to appeal must be submitted in writing within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. For additional information on filing an appeal, see "What if you do not agree with IDEM's final decision? How can you file an appeal?," on page ___ of this guide.

Can you participate in the process when IDEM issues an approval for a waste tire storage or a waste tire processing facility?

Facilities storing or processing waste tires must obtain a certificate of registration from OLQ, which is valid for five (5) years. Although IDEM has thirty (30) days to process waste tire registration applications, they are usually processed within a week. Applications for renewal must be submitted sixty (60) days prior to the expiration date of the current certificate.

Applicants for waste tire storage or waste tire processing certificates of registration are required to notify all adjoining property owners or occupants (including those located on the other side of the street or road from the waste tire facility). Adjoining property owners or occupants should be notified within ten (10) days of when the application is submitted. Applicants also should provide to OLQ a list of the adjoining property owners and occupants who were notified, as well any other party that could be considered potentially affected by the waste tire operation.

If a waste tire storage or processing certificate of registration is issued to the applicant, OLQ will, in turn, mail a Notice of Decision to all adjoining property owners and potentially affected parties. That notice will describe the waste tire facility and provide information on how file an appeal to seek an administrative review of OLQ's decision by the Indiana Office of Environmental Adjudication. Persons seeking to appeal must file a petition with the OEA within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of the permitting decision. Petitions to appeal must be submitted in writing to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. For additional information on filing an appeal, see "What if you do not agree with IDEM's final decision? How can you file an appeal?," on page ___ of this guide.

Hazardous Wastes

Does everyone generating or handling hazardous waste need a permit?

No, generators of hazardous waste do not need a permit unless they also are treating, storing or disposing of their waste on-site. When no permits are required, there also is no public comment period or other opportunity for public comment. Nonetheless, IDEM does protect public health and the environment by regulating those who generate hazardous waste. The regulation of hazardous waste generators is described in the following paragraphs.

"Hazardous wastes" can be a solid or liquid waste, or a sludge. It can be the by-product of manufacturing processes or discarded commercial products that may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. The federal Resource Conservation and Recovery Act (RCRA) requires "cradle-to-grave" tracking of hazardous wastes; from generation, to transportation, to treatment, storage, and disposal.

There are two main types of hazardous waste; characteristic wastes and listed wastes. "Characteristic hazardous wastes" are those that are either ignitable, corrosive, reactive (or explosive), or toxic. "Listed hazardous wastes" are wastes that contain specific substances, or that are the byproduct of specific processes. The EPA maintains four separate lists – called the F, K, P, and U lists -- that include several hundred different hazardous, or acutely hazardous, wastes.

Hazardous wastes also are subject to two specific federal rules. The "derived from" and "mixture" rules. Any wastes that are derived from hazardous wastes are also considered to be hazardous wastes. For example, if hazardous waste is incinerated, the remaining ash also is hazardous waste because the ash was derived from hazardous waste. Similarly, under the mixture rule, any waste that is mixed with hazardous waste, is also considered to be hazardous waste. This is meant to eliminate the strategy of turning a hazardous waste into a non-hazardous waste by diluting it. Under the mixture rule, if you mix 10 pounds of hazardous waste with 990 pounds of non-hazardous material, you will have 1000 pounds of hazardous waste.

Hazardous Waste Generators

Many commercial and industrial activities may generate hazardous waste, and all facilities or persons that produce hazardous waste are considered generators. As stated previously, although hazardous waste generators are not required to obtain a permit unless they also intend to treat, store, and/or dispose of their hazardous waste onsite, all hazardous waste generators are regulated. All generators of hazardous waste are responsible for identifying their hazardous wastes (Having their wastes analyzed so that they know which wastes qualify as hazardous wastes). In addition, hazardous waste generators are responsible for ensuring that their hazardous waste is properly handled onsite and also ensuring that, when it is shipped offsite, it is only sent to a facility that is properly permitted or otherwise authorized to treat, store, or dispose of it.

There are three (3) categories of hazardous waste generators. These categories are determined by the amount of hazardous wastes or acutely toxic hazardous wastes they generate monthly, and/or on the amount of such wastes they accumulate on site at any given time.

For example, those facilities or individuals who generate more than 220 pounds, but less than 2200 pounds, of hazardous waste during any month of the previous year, or who accumulate (store temporarily) onsite at any one time a total of less than 13,227 pounds of hazardous waste, are considered Small Quantity Generators (SQGs). SQGs must register with IDEM to obtain a federal RCRA (Resource Conservation and Recovery Act) identification number. SQGs must ship their hazardous waste to a permitted hazardous waste treatment, storage, or disposal facility.

Facilities that generate, or accumulate onsite, less hazardous waste than a SQG are considered Conditionally Exempt Small Quantity Generators (CESQGs), and are not required to register with IDEM for a RCRA ID number. When it comes to disposing of hazardous wastes, households are also considered as CESQGs. CESQGs are not required to ship their hazardous waste to a licensed (permitted) hazardous waste disposal facility. Although households and other CESQGs may instead dispose of such wastes by way of their neighborhood curbside trash pick up, or contracted trash hauler, they should contact their municipal trash service, contractor, or Regional Solid Waste Management District regarding proper disposal requirements for the hazardous wastes they generate. SQGs and CESQGs may not exceed the allowable limits of their generator category for the amount of hazardous wastes they may generate, or accumulate onsite at any give time, or they will be reclassified into the appropriate higher category.

Meanwhile, facilities that generate, or accumulate onsite, more hazardous waste than a SQG are considered Large Quantity Generators (LQGs). In addition to registering for a RCRA ID number, and shipping their waste to a permitted treatment, storage, and disposal facility, LQGs must also pay an annual fee and submit to IDEM a biennial report documenting the handling of the hazardous waste they generate. Furthermore, anyone who generates 2.2 pounds, or more, of acutely toxic hazardous waste in any month, or who accumulates on-site at any time 2.2 pounds, or more, of acutely toxic hazardous, regardless of the rate of generation, automatically is subject to all the requirements applicable to a Large Quantity Generator (LQG) of hazardous waste, including filing a Biennial Report and paying the annual \$1,565 generator fee.

The period during which a hazardous waste generator may accumulate (temporarily store) hazardous wastes on-site without a permit is limited, depending on whether the generator is classified as a large or small quantity generator. Large Quantity Generators may only accumulate hazardous waste on-site for 90 days. Small Quantity Generators may accumulate hazardous waste on-site for 180 days before it must be properly shipped off-site to a licensed hazardous wastes treatment, storage, or disposal facility. However, small quantity generators that ship wastes to facilities more than 200 miles away may accumulate their hazardous waste on-site for up to 270 days. No hazardous waste generator may store hazardous wastes on-site beyond these time limits without obtaining a hazardous wastes treatment, storage, and disposal facility permit from the IDEM OLQ.

Generators shipping hazardous waste off-site to a licensed hazardous waste treatment, storage or disposal facility also are required to use a qualified shipper and to meet all requirements to label waste containers and maintain accurate records of who had custody of the wastes, and where it was taken.

As mentioned previously, there are no public notices or opportunities for public comment associated with generating or shipping hazardous waste. However, persons with questions about whether there are registered generators in their neighborhood, or concerns about whether such wastes are being properly managed, may call 317/ 233-1052..

SIDEBAR:

If you have access to the Internet, you also may visit the IDEM website at http://www.state.in.us/idem/olq/permits/permit_lists/index.html#registered, from where you can access the following hazardous waste generator lists:

For a list of hazardous waste generators in your county (Hazardous Waste Notifiers List - Sorted by County), visit:

http://www.state.in.us/idem/olq/publications/lists_and_maps/hw_handler_county.pdf, (Simply scroll down the list to find your county.)

For a list of facilities in Indiana permitted to accept hazardous waste for treatment, [long term] storage, or disposal (Permitted Hazardous Waste Treatment, Storage and/or Disposal (TSD) Facilities List, visit:

http://www.state.in.us/idem/olq/publications/lists_and_maps/hazardous_tsd_list.pdf), or

For the most current report on the type and amount of hazardous waste generated by each generator in Indiana (1999 Hazardous Waste Generation, visit:

http://www.state.in.us/idem/olq/site_information/requests/99Gen_report.PDF).

The report, "Hazardous Waste Generated in 1999" is organized by county, so to find information on a specific facility first scroll down the report until you find the county you are interested in, then scroll through the county list to find the facility in which you are interested. Under the facility name, you can view a list of the types and amount of wastes disposed of, and information on where the waste was shipped for treatment, storage, or disposal.

How are permits issued to facilities for the treatment, storage or disposal of hazardous wastes, and how can you participate in the permitting process?

What is the pre-application public participation process required for "new" or "significantly changed"(existing) hazardous waste facility permits?

Applicants seeking an initial permit for a "new" hazardous waste facility, or seeking a permit renewal that also includes significant changes to the existing permitted facility (changes the equivalent of a Class 3 Modification), are required to hold at least one public meeting prior to submitting their applications.

At least thirty (30) days prior to the "pre-application meeting", the applicant must place a public notice in the form of an advertisement in the primary newspaper of the affected county, and possibly in newspapers of adjoining counties if that is deemed necessary by OLQ. The applicant must provide additional public notice by posting a readable sign

about the meeting at or near the facility property, and by announcing the meeting on at least one (1) local radio or television station. Each of these public notice formats should list the date, time and location of the meeting, describe the proposed facility and the purpose of the meeting, provide a contact person for the applicant, and encourage people to contact the applicant at least seventy-two (72) hours in advance of the meeting if they have any special access needs. The applicant also should notify OLQ and other appropriate units of state and local government about the meeting.

At the “pre-application meeting” the applicant should solicit questions and comments, inform the community and interested parties of proposed hazardous waste management activities, and provide a sign-up sheet for attendees who wish to provide their names and addresses. After the meeting the applicant must submit to OLQ a summary of the meeting, a copy of the attendees sign-up sheet, and copies of any written comments or materials submitted at the meeting.

Hazardous Waste Permits; General Public Notice Information

The issuance, renewal, or significant modification of any permit for a hazardous waste storage, treatment or disposal facility includes substantial public notice requirements and opportunity for public input. Some public notice requirements must be implemented by the IDEM Office of Land Quality (OLQ), while others are the responsibility of the applicant.

OLQ maintains mailing lists used to notify interested persons regarding changes to the permit status of the various permitted hazardous waste management facilities in Indiana. The Individual Facility Mailing List includes city and local officials, state legislators, members of congress and all private citizens who have requested to be notified of changes to the permit conditions of any specific facility. OLQ also maintains a list of all people who wish to be notified of changes to permit conditions at any permitted hazardous waste facility in the state.

Each year, a public notice is placed in newspapers around the state advising people of what they need to do to be added to one of these lists. Other names are added to these lists based on written or telephone requests, or as a result of attending a public hearing regarding permitting, or modifying the existing permits of, hazardous waste facilities. If you wish to have your name added to one of these public notification lists, please contact the OLQ permitting branch at 317/233-1052 (Glynda Oakes).

Like all other IDEM applications for new permits or modifications, hazardous waste applicants are required to provide an affidavit stating that adjoining property owners and occupants were, or will be, notified within ten (10) days of the submission of an application. The applicant also must identify and provide the addresses of local county and city (or town) elected officials as part of the application. This information will help OLQ notify those officials about the application and the final permitting decision.

The OLQ has three hundred and sixty-five (365) days to issue permitting decisions for new hazardous waste landfills, incinerators or treatment or storage facilities, or for the renewal of permits for treatment or storage facilities. There is no time limit for OLQ to issue decisions to renew hazardous waste permits. There also is no time limit for OLQ to

review a Post-Closure permit (a permit for maintaining and monitoring a closed land disposal unit), although OLQ tries to complete all permit reviews in 365 days.

What is the public notice process, and what are the opportunities for public participation associated with hazardous waste permitting?

When OLQ receives an application for a new facility, it notifies local county and city (or town) officials. However, local officials are not notified of applications for permit renewals for existing facilities.

Once a draft permit has been prepared by OLQ, a public notice is placed in the largest newspaper within the affected county, in the most local newspaper (if it is different from the largest newspaper), on a local radio station, and on the OLQ Internet website. At that time, OLQ also will place in the local library a copy of that draft permit, a copy of the original application, a fact sheet, and a copy of the public notice announcement.

SIDEBAR:

(The Good Character disclosure statement is required of all applicants for commercial hazardous waste treatment, storage, and/or disposal facilities. It should describe any prior legal proceedings, judgements, or convictions. The applicant's experience managing similar wastes, any prior complaints that resulted in fines and any record of violating state and federal law or endangering public health should also be made known, with descriptive accounts of any such transgressions. OLQ may deny a permit to any applicant with a substantial record of convictions, repeated violations, or intentional misrepresentation.)

The public notice announces the availability of a draft permit for public review. It also declares that a 45 day public comment period will begin on the day after publication of the public notice. The public notice describes where the application, fact sheet, Good Character disclosure statement, and draft permit may be viewed (at the library, OLQ file room, and IDEM regional offices) and also will provide an OLQ contact person for obtaining additional information.

If the application request is for a new facility, or the renewal of a hazardous waste landfill or incinerator, a public hearing will automatically be scheduled by OLQ, and the date, time, and location of that meeting also will be included in the public notice. The hearing will be held at least 30 days into the 45 day public comment period. If a public meeting or public hearing is not automatically scheduled and announced in the initial public notice, OLQ may grant a requests for such a meeting or hearing. At that time, OLQ would also automatically extend the public comment period.

OLQ has issued hazardous waste permits to fewer than 30 facilities statewide. Some are for private facilities that only treat, store, and/or dispose of wastes generated onsite. Hazardous waste treatment, storage, and/or disposal facilities that receive hazardous wastes from offsite are considered commercial facilities, and must submit a Good Character disclosure statement as part of the application process. During the public comment period, OLQ also will receive comments regarding the Good Character disclosure statement of applicants for commercial facilities.

After the public comment period and any extensions to it have expired, the OLQ will prepare and issue a final permitting decision. A copy of the permit is sent to the applicant and a Notice of Decision is sent to local officials, all persons on the OLQ mailing lists, all

persons who signed up at public meetings or hearings to received notice of the final decision, and to all persons who submitted comments. The Notice of Decision states whether the permit was issued or denied, and is accompanied by a Response to Comments that responds to all relevant comments about the permit that were submitted during the public comment period or at the public hearing. The Notice of Decision also includes information on how to appeal OLQ's decision by submitting a petition to the Office of Environmental Adjudication for an administrative review or stay of the decision. Petitions must be sent to the Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204, within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of receipt of the Notice of Decision. For additional information on filing an appeal, see "What if you do not agree with IDEM's final decision? How can you file an appeal?," on page __ of this guide.

What is the public notice process and what are the opportunities for public participation associated with changes (permit modifications) to existing hazardous waste permits?

SIDEBAR:

Listed below are the allotted time frames within which OLQ may review requests for various levels of modifications to existing hazardous waste treatment, storage, and/or disposal facilities:

365 Days

Class 3 modifications to hazardous waste landfills

270 Days

Class 3 modifications to hazardous waste treatment or storage facilities

120 Days

Class 2 modification to a hazardous waste facility (landfill, incinerator, treatment or storage facility)

60 Days

Class 1 modifications to a hazardous waste facility (landfill, incinerator, treatment or storage facility) requiring prior written approval from OLQ

When a permit is modified, only the conditions subject to modification are reopened. The IDEM OLQ must maintain a list of all approved permit modifications, and must publish a notice once a year in a statewide newspaper that an updated list is available for review. Modifications can be requested by the permit holder (permittee). However, the IDEM OLQ can modify the permit at any time based on information that cause exists to require such modifications to assure that the permit continues to comply with current applicable standards. Members of the public also may make a case that a permit should be modified.

Class 3 Modifications substantially alter the facility or its operations. The permittee must identify its request to OLQ as a Class 3 modification, describe the exact changes to permit conditions and the supporting documents referenced by the permit, and explain why the modification is needed.

The permittee must notify all appropriate units of state and local government and all persons on the facility mailing list maintained by OLQ. The permittee also must publish a notice in a major local newspaper within seven days (before or after) the submission of the modification request. In addition, the permittee must provide a 60 day public comment period, hold a public meeting no earlier than 15 days after the public notice and no later than 15 days before the end of the comment period. The permittee also must make copies of the modification request and supporting documents available to the public for viewing or copying as well as provide a contact within IDEM from where the public can obtain the compliance history of the permitted facility.

OLQ must notify all appropriate units of state and local government and all persons on the facility mailing list within 10 days of any decision to grant or deny a Class 3 Modification. At that time, it also must respond to all significant written comments received during the public comment period.

Within 270 days after receiving the modification request OLQ must approve or deny it. OLQ also has the option to grant a temporary, 180 day authorization to change the conditions of the permit (see Temporary Modification Authorizations, on page __ [next page]).

Class 2 Modifications apply to changes that are necessary to enable a permittee to respond in a timely manner to variations in the types and quantities of waste managed by the facility. Class 2 modifications also are required before a facility can adopt technological advancements, or make changes necessary to comply with new regulations, without substantially changing the design specifications or management practices in the permit.

The permittee must submit a request to OLQ that identifies the requested permit change or changes as a Class 2 Modification request. The request must describe the exact changes to be made to permit conditions and explain why they are needed. The permittee must also notify all appropriate units of state and local government and all persons on the facility mailing lists maintained by OLQ. They also must publish public notice, and provide a 60 day comment period. In addition, the permittee must hold a public meeting no earlier than 15 days after the public notice but no later than 15 days before the end of the comment period. The permittee must make copies of the modification request and documentation available to the public.

Within 120 days after receiving the request, the OLQ must approve or deny it. Or, it may instead determine that the permittee must follow the procedure for a Class 3 Modification due to the level of public interest, or the complex nature of the change. OLQ also has the option to grant a temporary, 180 day authorization to change the conditions of the permit (see Temporary Modification Authorizations, on page __ [next page]).

OLQ must notify all appropriate units of state and local government and all persons on the facility mailing list within 10 days of any decision to grant or deny a Class 2 Modification.

Class 1 Modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. They do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

The permit holder must notify the OLQ within 7 calendar days of the modification being put into effect, stating the changes being made, and why they are necessary. However, some Class 1 Modifications requests do require OLQ's prior approval. In those instances, the permit holder must, within 90 calendar days after the modifications are approved, notify all appropriate units of state and local government and all persons on the facility mailing lists maintained by OLQ.

Temporary Modification Authorizations

Upon the request of the permittee, OLQ may, without prior public notice, grant a temporary authorization of a Class 2 or Class 3 modification. However, that authorization must be in compliance with established national standards for the acceptable management of hazardous waste.

Such temporary authorizations are most appropriate when necessary to facilitate timely implementation of closure or corrective action, to allow treatment or storage in tanks, containers or containment buildings in accordance with established national standards, to prevent disruption of ongoing waste management activities, to enable permittees to respond to changes in the type and quantities of wastes to be managed, or to facilitate other changes to protect human health and the environment. A temporary authorization may be reissued for one additional 180 day period if the permittee has applied for a Class 2 or 3 modification.

Like all IDEM permitting decisions, modifications to hazardous waste permits may be appealed to the Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204, within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S.Mail) of receipt of the Notice of Decision. For additional information on filing an appeal, see "What if you do not agree with IDEM's final decision? How can you file an appeal?," on page ___ of this guide.

Sidebar:

What is hazardous waste, also known as RCRA waste?

RCRA (Resource Conservation and Recovery Act), Subtitle C “hazardous wastes” are required to have “cradle-to-grave” tracking of their generation, transportation, treatment, storage, and disposal. There are two (2) main types of RCRA hazardous waste; “characteristic” wastes and “listed” wastes.

“Characteristic” hazardous wastes are defined in the U.S. Code of Federal Regulations (40 CFR 261, Subpart C) as exhibiting one of four hazardous characteristics; ignitable, corrosive, reactive (or explosive), or toxic, but are not listed or otherwise excluded from Subtitle C regulation. It is the responsibility of the generator to determine whether his wastes exhibit one or more of these characteristics.

Ignitable characteristic hazardous wastes include; liquids (other than water-based mixtures containing less than twenty-four percent [24%] alcohol) which can be ignited at temperatures of one hundred forty degrees Fahrenheit (140° F) or less; solids which can, under normal conditions, ignite through friction, exposure to moisture, or spontaneous chemical changes. Ignitable compressed gas and oxidizer (as defined under 49 CFR 173.151) are also considered ignitable wastes.

Corrosive characteristic hazardous wastes are those with a pH equal to or less than two (2), or equal to or greater than twelve and one-half (12.5). Liquids which can corrode steel at a rate of greater than one-quarter inch ($\frac{1}{4}$ ”) per year are also characterized as corrosive. (pH is a scale running from 1 to 14 [standard units], used to measure the strength of acidic and alkaline substances mixed with water or other liquids. Acidic solutions register below 7, and alkaline solutions register above 7, while the pH of pure water is 7, which is a neutral. The pH of solutions can also vary, depending on how dilute or concentrated they are. In addition, pH can be temperature sensitive, as solutions generally can be made more concentrated at higher temperatures. Vinegar generally has a pH of 3.4 to 2.4. Meanwhile, the pH of a room temperature solution of baking soda is about 8.3, the pH of household cleaning ammonia is approximately 11, and solutions containing lime or lye can be mixed to a maximum strength nearing pH 14).

Reactive characteristic hazardous wastes are substances unstable enough to be able to undergo violent change without detonations, or are capable of exploding under normal conditions or when heated under confinement. Substances which react violently with water, or which form potentially explosive mixtures or generate dangerous types or amounts of toxic gases when mixed with water are also characterized as reactive. Reactive wastes also include those cyanide or sulfide bearing substances capable of generating dangerous or environmentally threatening quantities of toxic gases when exposed to pH levels between 2 and 12.5. Explosives as defined under 49 CFR 173 (51, 53, or 88) are also characterized as reactive wastes.

Toxic characteristic hazardous wastes are those solid wastes determined by a Toxicity Characteristic Leaching Procedure test to contain levels of certain toxic metals, pesticides, or other toxic organic chemicals at, or above, specific federally regulated thresholds. That is, if the extracts leached from a waste using the TCLP test contain one or more of 39 toxic contaminants listed in Table I of 40 CFR 261.24 – and that table includes arsenic, benzene, cadmium, chlordane, creosol, lead, mercury, selenium, and vinyl chloride – at levels which exceeding the maximum unregulated concentrations, the waste must be characterized as a toxic hazardous waste.

The **F List** is comprised of **28** different waste streams from non-specific sources. It includes some types of spent solvents, industrial wastewater treatment sludges, quench water sludges, petroleum-processing sludges and leachate (liquids which have percolated through land disposed wastes) from hazardous waste.

The **K List**, on the other hand, includes **116** hazardous wastes comprised mostly of residues from specific types of chemical reactions or distillation or purification processes associated with producing wood preservatives, organic and inorganic chemicals, pesticides, explosives, inks, veterinary pharmaceuticals, petroleum refining, metal refining, coke production and coal tar distillation.

The **P List** includes **239** chemical substances which have been identified as acutely hazardous, although they also may be reactive or exhibit other characteristics. The P List is comprised of commercial chemicals which may be off-specification (for example, they may have impurities), might have been spilled, or are a container residue. If these P List substances are to be discarded, they must be disposed of as listed hazardous wastes. However, P List substances – whether off-specification, only partially spent, collected from nearly empty containers, or otherwise useful – may still be used in other commercial or industrial processes in lieu of disposal, and are not to be considered as hazardous wastes until such time as they do require disposal.

The **U List** includes **521** substances identified as toxic wastes. They may have additional hazardous properties such as being ignitable, reactive, or corrosive. Like the chemical substances on the P List, U List substances also are commercial chemicals in need of disposal as a result of being spilled, being off-specifications, or because they are container residue. However, they too may be suitable for less stringent commercial or industrial processes in lieu of disposal, and are therefore not regulated as waste under these circumstances.

“Hazardous Constituents”

RCRA also lists hazardous constituents, which include many of the chemical compounds which are the chemicals of concern in listed waste, that is, the hazardous constituents are what make hazardous waste “hazardous.”

The RCRA lists of Hazardous Constituents are found in 40 CFR (Code of Federal Regulations) Chapter 1 (Environmental Protection Agency - Continued), Subchapter 1 (Solid Wastes – Continued):

- Part 261, Appendix VIII– Hazardous Constituents (480 chemical substances)
- Part 264, Appendix IX – Groundwater Monitoring List (221 chemical substances)

RCRA Corrective Action addresses releases of hazardous wastes and hazardous constituents from RCRA permitted facilities, interim facilities, or facilities that have been treating, storing or disposing of hazardous waste without a permit.

Part 6

What opportunities exist for participating in the IDEM decision making process associated with environmental cleanups?

Chemical spills and other past, or ongoing, residential, commercial or industrial activity sometimes contaminate the environment at specific locations, or sites. As legislation enacted over the past few decades has been carried out, both federal and state governments have worked together to clean up these contaminated sites. Federal and state agencies have 1) developed an inventory, or listing, of all known sites, 2) organized the lists of sites by ranking, or prioritizing, them according to the level of potential threat to human health and the environment and 3) conducted site cleanups. Cleanup activity is frequently referred to as “remediation.”

As new spill events occur, or older contaminated sites are newly discovered, sites are added to the lists while other sites may be removed from the lists as cleanups are completed. In other instances, sites may undergo a partial cleanup, known as a "Removal Action", to stabilize or remove the most serious contamination, while other, less threatening contamination remains. Such sites remain on the lists of contaminated sites to determine whether further cleanup is needed to address long term risk.

At the federal level, heavily contaminated sites are included on a National Priority List (NPL). Sites on this list are cleaned up under CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act) better known as Superfund. Sites in Indiana either not scoring high enough to be addressed by Superfund or not accepted by the EPA may score high enough to be placed on a state cleanup priority list called the Commissioner's Bulletin. Currently (as of December 2000), 37 contaminated sites in Indiana have been designated as Superfund sites. Cleanup activities have been completed at 22 of those sites, including 8 sites which have since been taken off the NPL list. The opportunities for public participation in federal cleanups are discussed (below/on the next page?).

At the state level, IDEM uses the “Indiana Scoring Model” (described in 329 IAC 7-1), which is closely modeled after the EPA's “Hazardous Ranking System” and which scores sites on a scale from 0 to 100. Ranked sites are listed on the Commissioner's Bulletin. As of December 2000, there were 62 sites with scores ranging from 8 to 58 listed in the Commissioner's Bulletin. The Commissioner's Bulletin is published annually in the Indiana Register. Sites with a score of 5, or less, may be dropped from the list. IDEM also operates several other cleanup programs for sites not listed on the NPL Superfund list or on Commissioner's Bulletin. The opportunities for public participation in state cleanups are discussed on page ____.

Federal Cleanups:

As a partner with EPA, IDEM has a role in all federal cleanups in Indiana. Staff from the IDEM Office of Land Quality's Remedial Services Branch, Federal Programs Section fill that role.

What is the public participation process associated with Superfund (CERCLA) cleanups?

When sites which may potentially be heavily contaminated with hazardous wastes are first brought to the attention of U.S. EPA or IDEM's Office of Land Quality (OLQ) Superfund (or CERCLA, the Comprehensive Environmental Response, Compensation and Liability Act) cleanup staff, agency staffs respond by conducting a Preliminary Investigation and Site Assessment. EPA generally is the lead agency for Superfund related activities, with IDEM serving a supporting role, although IDEM does sometimes serve as the lead.

At the time of the Preliminary Investigation and Site Assessment, the agencies begin to build a mailing list of interested and potentially affected parties. They also conduct community interviews and solicit public input to measure the extent of community concern. In addition, the agencies' staffs begin identifying PRPs (Potentially Responsible Parties); those persons who contributed to the contamination at the site. If the Preliminary Investigation and Site Assessment indicates that the site scores above 28.5 on the EPA's "Hazardous Ranking System," the site may be nominated for inclusion on the National Priority List (NPL). The Governor is asked to agree before any site is formally placed on the NPL.

Once a site is on the NPL, a full scale investigation of the site, known as a Remedial Investigation and Feasibility Study (RI/FS), will be conducted. During the RI/FS, IDEM and/or U.S. EPA will often hold public informational meetings to make cleanup issues known. Afterward, the agencies will draft a Proposed Plan for Remedial Action, which lists all cleanup alternatives and also includes the cleanup action recommended by the agencies. All of the alternatives are then balanced against nine criteria listed in CERCLA, and the alternative which provides the best balance is selected as the recommended alternate. The nine criteria to be considered are:

1. **Overall Protection of Human Health and the Environment**, which addresses whether a remedy provides adequate protection and describes how risks posed through each pathway are eliminated, reduced, or controlled through treatment, engineering controls, or institutional controls.
2. **Compliance with ARARs (Applicable Or Relevant And Appropriate Requirements)**, which addresses whether a remedy will meet all of the applicable or relevant and appropriate requirements of Federal and State environmental statutes and/or provides grounds for invoking a waiver.
3. **Short Term Effectiveness**, which refers to the speed with which the remedy achieves protection, as well as the remedy's potential to create adverse impacts on human health and the environment that may result during the construction and implementation period.

4. **Long Term Effectiveness and Permanence**, which refers to the amount of risk remaining at a site and the ability of a new remedy to maintain reliable protection of human health and the environment, over time, once cleanup goals have been met. \
5. **Reduction of Toxicity, Mobility, or Volume through Treatment**, which addresses the anticipated performance of the treatment technologies that may be employed in a remedy.
6. **Implementability**, which addresses the technical and administrative feasibility of a remedy, including the availability of materials and services needed to implement (or carry out) the chosen solution.
7. **Cost**, which addresses the estimated capital and operation and maintenance costs, as well as a present worth cost. Present worth is the total cost of an alternative in terms of today's dollars.
8. **Support Agency Acceptance**, which indicates whether, based on its review of the Removal Action plan, the support agency (either IDEM or the U.S. EPA) concurs with, opposes, or has no comment on the recommended alternative.
9. **Community Acceptance**, which considers whether comments received during the public comment period for the proposed cleanup plan (Interim Remedy Proposed Plan) reflect community support.

Although there may be various public information meetings throughout the Superfund process, one of the primary opportunities for public participation occurs when the Proposed Plan for Remedial Action – a fact sheet prepared by the lead agency and listing all cleanup alternatives, including the different available technologies and possibly differing levels of cleanup – is placed on public notice. The public notice will announce that a public meeting will be held at which public comments on the Proposed Plan for Remedial Action are recorded. The public notice also will announce the beginning of a thirty (30) day public comment period during which written comments on the plan may be submitted to the agencies. In addition, the public notice will include: 1) the place, time and location of a public meeting, 2) a history of the site, 3) the results of the RI/FS, 4) cleanup alternatives proposed for action, 5) the cleanup alternative recommended by the agencies, 6) a comparison of the recommended alternative to nine criteria required by CERCLA, 7) pre-addressed public comment forms, 8) staff contacts for further information, 9) the location of public information repository such as a local library or county health department, 10) an Americans With Disabilities Act contact to help ensure access to the meeting for citizens with disabilities, and 11) information regarding the next steps in the process.

After the public meeting and the close of the thirty (30) day public comment period, the lead agency will review all comments and draft a Record of Decision (ROD). The ROD will be accompanied by a Responsiveness Summary with written responses to all comments submitted at the public meeting and during the thirty (30) day public comment period. If the cleanup proposal recommended in the ROD is different from the proposal recommended in the Proposed Plan for Remedial Action, then the ROD must include an explanation of why the recommended alternative was changed. An additional public informational meeting may be held when the ROD is made public. Cleanup work can begin at any time after the ROD is signed by the lead and support agencies.

However, any further major changes to the cleanup plan featured in the ROD would require a ROD Amendment. In turn, a ROD Amendment requires another round of opportunities for public input: another public notice, public meeting, and thirty (30) day public comment period. ROD Amendments are usually needed if additional pollutants, or more extensive contamination is discovered after work begins at the site.

Once work is completed, the site may be removed from the National Priority List. Such delisting requires that EPA publish a rule in the Federal Register to remove the site from the NPL.

What is the public participation process associated with the Defense Environmental Restoration Fund program?

The Defense Environmental Restoration Program focuses on the cleanup and restoration of contaminated military installations. The Department of Defense (DoD), which is responsible for conducting the cleanups, is the lead agency at all DERP sites. As a supporting agency, IDEM's role is to oversee DoD and ensure the cleanups are being conducted appropriately. All environmental restorations being conducted by DoD are required to follow the Superfund (the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA) process, even if the sites are not on the National Priorities List (NPL). Therefore, the same public participation requirements applied in Superfund also apply to all DERP cleanup projects. The environmental coordinator of the affected DoD installation, who generally serves as the primary point of contact, is responsible for compiling and maintaining mailing lists and publishing public notices.

DoD policy requires that a Restoration Advisory Board (RAB) be created when there is sufficient and sustained community interest. For example, (1) when the closure of an installation involves transfer of property; (2) when 50 citizens petition for a RAB; (3) when a federal, state, or local government body requests formation of a RAB; or (4) when an installation determines a RAB is necessary. The RAB is DoD's approach to increasing public participation in the DERP. The RAB is designed to provide a forum for the exchange of information among members of the community and representatives from the installation, the USEPA, and state and local governments. DoD policy requires that each RAB have an installation co-chair and a community co-chair. The co-chairs share similar responsibilities for the administration of the RAB. The installation and community co-chairs are equals, jointly developing meeting agendas and ensuring that appropriate issues are raised and discussed. The joint guidelines state that membership of the RAB should reflect the diverse interests and population of the community.

The RAB has the responsibility to: (1) give advice; (2) discuss such key issues as the scope of studies and level of cleanup; (3) review plans and reports; (4) identify project requirements; and (5) recommend priorities. Many RAB meetings are used to satisfy the public meeting requirements of CERCLA.

DERP cleanups begin with a preliminary site assessment/investigation. This may lead to a full scale investigation of the site, known as a Remedial Investigation and Feasibility Study (RI/FS). During the RI/FS, DoD may hold public informational meetings (RAB meetings) to make cleanup issues known. Afterward, DoD will draft a Proposed Plan for Remedial Action, which lists all cleanup alternatives and which includes the cleanup action recommended by the agencies. As with other Superfund cleanups, the recommended cleanup alternative of the Proposed Plan for Remedial Action must meet the nine criteria required by CERCLA (described on page ____).

Again, like Superfund cleanups, one of the primary opportunities for public participation occurs when the Proposed Plan for Remedial Action – a fact sheet prepared by the lead agency which lists all cleanup alternatives, including the different available technologies and possibly differing levels of cleanup – is placed on public notice. The public notice will announce that a public meeting will be held at which public comments on the Proposed Plan for Remedial Action are recorded. Publication of the notice also begins the thirty (30) day public comment period during which written comments on the plan may be submitted to DoD. The public notice will include: 1) the place, time and location of a public meeting, 2) a history of the site, 3) the results of the RI/FS, 4) cleanup alternatives proposed for action, 5) the cleanup alternative recommended by the agencies, 6) a comparison of the recommended alternative to nine criteria required by CERCLA, 7) pre-addressed public comment forms, 8) staff contacts for further information, 9) the location of public information repository such as a local library or county health department, 10) an Americans with Disabilities Act contact to help ensure access to the meeting for citizens with disabilities, and 11) information regarding the next steps in the process.

After the public meeting and the close of the thirty (30) day public comment period, DoD will review all comments and draft a Record of Decision (ROD). The ROD will be accompanied by a Responsiveness Summary with written responses to all comments submitted at the public meeting and during the thirty (30) day public comment period. If the cleanup proposal recommended in the ROD is different from the proposal recommended in the Proposed Plan for Remedial Action, then the ROD must include an explanation of why the recommended alternative was changed. An additional public informational meeting may be held when the ROD is made public. Afterward, cleanup work can begin.

However, any further major changes to the cleanup plan featured in the ROD would require a ROD Amendment. In turn, a ROD Amendment requires another opportunity for public input: another public notice, public meeting, and thirty (30) day public comment period. ROD Amendments are usually needed if additional pollutants, or more extensive contamination is discovered after work begins at the site.

Once cleanup work is completed, excess property at those military installations which have been closed may be transferred from DoD to civilian use through a Finding of Suitability to Transfer (FOST) document. The public must be notified no later than 30

days before the transfer of the property by deed. The military installation must also provide notice to the public that the FOST has been signed. The notice must be published in a local newspaper. It must announce that there will be a 30 day public comment period, describe how to submit comments, describe the property and its location, give the date on which the FOST was signed, list a contact person, and provide information on how to obtain or view a copy of the FOST document. If a public meeting is scheduled, the notice also must announce the time, place, location, and agenda for that meeting. Persons seeking an extension of the public comment period must submit a request to the environmental coordinator at the installation. All public comments received for FOST property transfers must be responded to by DoD. Those comments and responses are included in the FOST appendix.

The affected military installation is required to keep an Administrative Record of all the activities, comments, and responses associated with each cleanup site. Most commonly, these Administrative Records may be viewed at a public library. They also are available in IDEM's file room.

What is the public participation process associated with the Natural Resource Damage Program?

Three (3) federal laws, the Clean Water Act, the Oil Pollution Act, and CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act, better known as Superfund) all establish liability for damages to natural resources. Natural resource damage, which can be a byproduct of petroleum or hazardous materials contamination, is considered to have occurred if contamination has 1) damaged the land or water at, or migrating from, the site, 2) negatively affected the biological health of plants, animals, or invertebrates at, or migrating from, the site, or 3) other-wise made the site unfit for use for recreation or other human activities. Both federal and state government have an interest in restoring damaged areas. Under authority of the aforementioned federal laws, the states and various federal agencies have each appointed "Natural Resources Trustees" who represent the public interests associated with resource damage at Superfund or state cleanup sites.

Before the Trustees can claim damage to natural resources they are required to determine 1) if a release of oil or hazardous materials occurred, 2) could that release injure natural resources, and 3) has a PRP (Potentially Responsible Party or Parties) been identified, and is it likely a successful claim can be brought against the PRPs.

Because various state and federal agencies are empowered to appoint Trustees, a Natural Resources Damage Claim may involve several Trustees. Each Trustee is served by the staff of their respective agency. Although several agencies may be participating in a claim, the U.S. Fish and Wildlife Service, the Indiana Departments of Natural Resources (DNR) and IDEM generally are the primary agencies involved in resource cleanups. Any one of the various participating agencies may serve as the lead agency. Similarly, because each damaged site is unique and the circumstances surrounding natural resource

cleanups can vary so much from site-to-site, the cleanup rules allow the participating agencies some flexibility in implementing the damage claim process.

Cleanups under this program may begin with the filing of a “Pre-Assessment Screen and Determination” or a civil complaint. A Pre-Assessment Screen is a legal notice of pending enforcement sent to all known Potential Responsible Parties (PRPs). (PRPs are identified during the initial cleanup investigation.) Only the PRPs are notified at this point. The Pre-Assessment Screen and Determination invites PRPs to participate in the damage assessment, and gives them 60 days to respond to that invitation.

After initiating a Pre-Assessment Screen, the Trustees may write an investigation plan, or “Assessment Plan,” which is similar to the Remedial Investigation phase of a Superfund cleanup. The Assessment Plan evaluates how the contaminants impact the environment. For example, it looks at any toxicity test results, determines if the contamination impacts animals in the area by accumulating in their tissue or affecting their reproductive abilities, and determines how the contaminants have interfered with the natural resources. The Assessment Plan can include one or more “Injury Reports.” For example, there could be separate Injury Reports on a stream, the fish and other animals in the stream, plants along the stream bank, or how the contamination impacts birds visiting the site.

The Assessment Plan or its components are placed on public notice. The notice may appear in the Federal Register, in newspaper advertisements, or in news releases. Individuals already on mailing lists established during the initial Preliminary Investigation and Site Assessment stages of a Superfund cleanup may be contacted directly by mail. Generally, the public notice will describe the type of document being public noticed, provide details on where a copy of the document may be obtained or viewed (usually at an agency’s file room, at a local library, or on an agency web site), list a contact person, and give information on how comments may be submitted or how a public availability meeting or an extensions of the comment period may be requested.

Public meetings or hearings are not specifically required under the natural resource damage program but public meetings with the trustees or their representatives can be requested, or the trustees may hold “availability sessions” to allow for one-on-one discussion. Any meetings are usually held in the evenings, and are held near the site. Meetings are not recorded. Trustees or their representatives will answer questions at the meeting, and can later provide follow-up answers to questions which cannot be answered at the meeting. Questions may be answered in writing at the discretion of the Trustee. If a meeting is held, a fact sheet may be mailed out prior to the meeting to all persons who have contacted IDEM and requested to be notified of any decisions associated with the assessment or restoration plan. The meeting will be public noticed by the fact sheet, by ads in the local newspaper, by media releases, notice on the IDEM web page, and possibly by publication in the Federal Register.

The length of the comment period is set by the Trustee, and is usually for 30 days. However, reasonable extensions may be granted upon request by calling or writing the designated contact person.

Subsequent to the Assessment Planning phase, the Trustees may undertake a Restoration Planning Phase. A Restoration Plan evaluates all the damage to resources and discusses activities which could restore the area or otherwise compensate the public's loss of the use of those damaged resources. The Restoration Compensation Determination Plan is also placed on public notice, and is subject to a 30 day comment period.

After the public comment period, a finalized Restoration Compensation Determination Plan may be sent to the PRPs along with a request for the payment of damage claims by the PRPs. If the PRPs agree to a settlement, the Trustee will draft a Consent Decree, or settlement agreement, which must be placed on public notice in the Federal Register and other media outlets by the U.S. Department of Justice (DoJ). The notice announces the 30-day public comment period, explains the method for requesting a hearing and how to obtain information on the consent decree from the DoJ. Once the finalized Consent Decree is signed by the PRPs, the Trustees, and a federal judge, the PRPs will pay damages or agree to carryout the cleanup work with Trustee oversight.

In instances when the damage to natural resources is not extensive, Trustees may simply identify the damages during the Assessment Plan, then skip the formal Restoration Compensation Determination Plan process, and simply establish a dollar value for the damages and bill the PRPs. There will be a public notice and comment period associated with the damage settlement. At that time, the Consent Decree must be placed on public notice, and public comment must be accepted for at least 30 days.

If specific restoration work has not been determined in a consent decree, the Trustee must write a Restoration Plan (similar to the Record of Decision provided under Superfund), which is scaled to the amount of damages awarded and which addresses restoration or replacement of the damaged resources. (If the damage to natural resources is caused by petroleum, the Oil Pollution Act instead requires that a Restoration Plan be developed before the PRPs are billed for damages.) The Restoration Plan is then placed on public notice and public comments are accepted for 30 days. A meeting of public availability also may be held at this time.

Afterwards, Trustees will modify the plan, if appropriate. The finalized Restoration Plan will then be released, and will be accompanied by a Responsiveness Summary which will include all Trustee (agency) responses to public comments. (A copy of the Responsiveness Summary on public comments also is included as part of the Administrative Record which is maintained for each site.) Agency staff, acting on behalf of the Trustee, will then conduct the restoration activities. Or, as mentioned above, the PRPs have the option to carry out the Restoration Plan themselves, under the supervision of the Trustees and their agency staffs.

Trustees retain the right to settle with the PRPs at any time during this process so long as they can demonstrate that the settlement is adequate and reasonable. On the other hand, if the PRPs refuse to settle when presented with the finalized a Restoration Compensation Determination Plan, the dispute will go to court and be resolved by a federal judge. There are no opportunities for public comment if a federal court crafts the settlement. The settlement of a Superfund cleanup case and its related natural resources damage claim can be addressed in two (2) separate Consent Decrees, or they may be rolled into a single Consent Decree.

DRAFT

State Cleanups:

How is the State Environmental Cleanup Program organized? (Including the cleanup of sites on the Commissioner's Bulletin, as well as state remedial cleanups and immediate removals.)

Those sites that do not qualify for coverage under Superfund may be addressed by the State. Like Superfund, state cleanups rely on establishing the liability of a Potentially Responsible Party(s) to assume the costs of, or to conduct, the actual cleanup activities. If no Responsible Party can be determined, cleanups may be conducted by IDEM and paid for by the Indiana Hazardous Substance Response Trust Fund (See IC 13-25-4-1). However, unlike Superfund, state cleanups can target petroleum pollution as well as hazardous waste or hazardous substance contamination. Examples of state cleanup sites could include facilities such as petroleum terminals and refineries, abandoned landfills, former lead smelting and battery recycling sites, and other types of industrial sites, or smaller sites with abandoned storage tanks, waste tire piles, or drums of hazardous waste. State cleanups are conducted and/or monitored by staff from the IDEM Office of Land Quality's Remedial Services Branch. The three (3) types of sites that qualify as state cleanups are:

- 1) State Cleanup Sites (Those contaminated sites that scored high enough on the Indiana Scoring Model to be placed on the state cleanup priority list, called the Commissioner's Bulletin.)
- 2) Remedial Response Sites (Those sites which already have undergone some type of emergency response cleanup action to reduce an immediate threat to human health and the environment, but which may still need an additional, longer term cleanup to fully address remaining contamination. In some instances, remedial response sites could be scored by utilizing the Indiana Scoring Model and then become listed on the Commissioner's Bulletin.)
- 3) Immediate Removal Sites (Those sites requiring the time critical [within six (6) months] removal of contaminants which pose an immediate and substantial threat to the public health and/or the environment. However, the Immediate Removal program only addresses the removal of immediate danger, not the full-scale cleanup of a site.)

These three (3) types of sites can vary substantially with respect to the actual levels of contamination at the site, to the level of public interest in the site or to the proposed method of cleanup. Additionally, as with any cleanup site, there exists the continuing potential for discovery of additional, or lower than expected levels of, contamination at the site. This could further arouse or dispel public concern, or alter the extent or urgency of any required cleanup. The state cleanup program generally follows IDEM's Risk-Integrated System of Closure (RISC) when addressing each of the three (3) types of state cleanup sites. (For more information on RISC, see "RISC, the Risk-Integrated System of Closure," [page __](#).) However, flexibility in managing site cleanups and addressing public interest is necessary because circumstances vary from site-to-site.

To move a site through cleanup, the State Cleanup Program project manager works as closely as possible with the Responsible Party. The Responsible Party must submit an Investigation Report (detailing the extent of contamination at the site) and a Remediation Work Plan (detailing how the cleanup will proceed) to IDEM. If necessary, the site

manager may write an Agreed Order. By signing the Agreed Order, the Responsible Party formally acknowledges responsibility for the site and demonstrates their acceptance of financial responsibility for the cleanup. If the Responsible Party will not accept the terms of the Agreed Order, legal action by IDEM will follow. Once a cleanup agreement is in place, work can proceed at the site. Frequently, the Responsible Party or their contractor performs the site cleanup work, with oversight from IDEM State Cleanup staff.

What are your opportunities for participation in the State Cleanup Program?

It is the responsibility of IDEM to keep you (the public) informed and allow for community input in the decision-making process associated with State Cleanup Program sites. RISC (IDEM's Risk-Integrated System of Closure) requires that State Cleanup staff prepare a formal Community Relations Plan and conduct other public notification and public participation activities similar to the those required by the National Contingency Plan established by the Oil Pollution Act. The Community Relations Plan should include: conducting community interviews, providing an information repository, and ensuring that the public has the opportunity to view, and comment on, the proposed Remediation (cleanup) Work Plan. The Community Relations Plan also requires that IDEM hold a public meeting regarding the plan, which you may attend. State Cleanup Program staff must keep a transcript of the meeting, and respond to any comments submitted on the plan. Responses to all public comments will then be responded to in the Record of Decision, the document which finalizes the Remediation Work Plan. The Record of Decision describes the technical limits and goals of the selected remedy, serves as the legal document certifying that the remedy was selected in accordance the requirements of Superfund and the National Contingency Plan of the Oil Pollution Act, and provides a single comprehensive source of information about the site, and the remedy.

However, as suggested above, because some sites are smaller and/or are seemingly of lesser public interest, the IDEM Remedial Services Branch generally follows the RISC requirements based on the circumstances of the individual site, and the on the level of public interest demonstrated in each individual cleanup project. In the course of each cleanup project, state cleanup staff will be in contact with the local county health department. They may also seek input from local elected officials and will provide information and seek input from community leaders and other persons who express interest in the project.

If a site poses a substantial threat to public health and the environment, or if there is community interest, the site project manager may place the proposed Remediation Work Plan on public notice by announcing in a local newspaper where the plan may be viewed, and where interested persons may submit comments during the announced (30 or 45 days) comment period. State cleanup program staff may also establish an information site (repository) at a local library, where you, and other interested persons may come throughout the cleanup process to view the Investigation Report, the proposed Remediation Work Plan, the Agreed Order, responses to any public comments, the Record of Decision, quarterly progress reports on the cleanup, information on site closure

(the completion of the cleanup), and any other information included in the Administrative Record, which comprises the complete history of the site and site-related activities.

On the other hand, at sites which represent a lesser threat to public health and the environment, and for which there is little, if any, perceived public interest, State Cleanup Program project managers may move the cleanup activity forward with fewer public process activities. However, in such instances, you and other interested persons still may become involved in the process of planning and conducting the cleanup. If at any time, you are interested in any action being undertaken by the State Cleanup Program, but are unaware of a formal public participation process such as the one described above, you or any other member of the public have a right to contact the State Cleanup Program immediately at 317/234-0361 (fax 317/234-0428). State Cleanup Program staff will respond by providing you with access to any public records you request regarding the site, and depending on the level of public interest expressed in any project for which public participation processes were not initially planned because of the perceived lack of public interest, program staff may initiate a more extensive public participation process, such as is described above.

After remedial action (cleanup work) is completed at a State Cleanup Site listed on the Commissioner's Bulletin the site will be re-scored using the Indiana Scoring Model. If the site scores below "5", IDEM's State Cleanup Program or the site owner may seek to have the site "de-listed", or removed from the Commissioner's Bulletin. However, before the site is de-listed, the State Cleanup Program must place the request on public notice. The public notice announcement in a local newspaper must briefly describe the site, describe the original threat, the original Indiana Scoring Model score, the cleanup work performed and the re-score of the site. The local health department will then have 45 days to comment on the de-listing request.

Sometimes the Remediation Work Plan may recommend a solution that includes an air pollution or water pollution control device that requires a permit from the Office of Air Quality or the Office of Water Quality. In those instances, you and other interested persons will have the opportunity to join in any public participation processes associated with the particular type of permit being sought for the cleanup. The public participation processes associated with permitting are described in Part 4 of this Citizens' Guide.

Sites being addressed by the State Cleanup Program also may be eligible for inclusion in the Natural Resources Damage Program discussed on page ____.

The Responsible Persons (site owners or operators) of sites being addressed by the State Cleanup Program also have the option of participating in the Voluntary Remediation Program (VRP), rather than moving forward with a cleanup under the State Cleanup Program. However, participation in the VRP is only open to those sites which are not the target of an IDEM enforcement action, or pending enforcement action. The VRP program and the public participation process associated with it are discussed on page ____.

What is the RCRA Corrective Action process, and to what types of facilities does it apply?

RCRA Corrective Action focuses on preventing, and cleaning up, releases of hazardous wastes or hazardous constituents from facilities regulated by the Resource Conservation and Recovery Act (RCRA). Hazardous waste includes solid waste or a combination of solid wastes that because of its quantity, concentration, physical, or chemical characteristics may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment. RCRA, which was enacted by Congress in 1976, requires the cradle-to-grave tracking of the generation, handling, and disposal of hazardous wastes. RCRA authorizes the U.S. EPA to carry out the hazardous waste regulatory program. In turn, EPA has authorized Indiana to carry out, and enforce, RCRA.

Sidebar:

The hazardous wastes regulated under RCRA may be solid or liquid wastes, contained gases, or sludge, any of which could be by-products of manufacturing processes or discarded commercial chemical products. These types of hazardous wastes are specifically identified by RCRA, either as “listed” wastes or “characteristic” wastes. In addition, RCRA identifies specific hazardous constituents, which it also regulates.

The RCRA “listed wastes” include approximately 900 types of substances that are either the byproduct of some specific industrial process or chemical reaction, or are off-specification commercial chemical products or container residues. The RCRA “characteristic wastes” include those ignitable, corrosive, reactive [including explosive], or toxic substances not otherwise specifically listed by RCRA. The RCRA “hazardous constituents,” include approximately 700 of the chemical compounds found in many “listed wastes” and in “toxic characteristic wastes” which make those substances hazardous.

Although RCRA does regulate the handling of hazardous wastes by those facilities which generate it, RCRA does not require that hazardous waste generators obtain a permit. However, facilities which engage in the treatment, storage, and/or disposal of hazardous wastes are required to obtain a RCRA permit. (The public participation processes associated with permitting are discussed on [pages __ - __](#).) In addition, the Solid and Hazardous Waste Amendments (HSWA) to RCRA, which took effect in 1986, expanded RCRA to include RCRA Corrective Action, which addresses the cleanup of releases of hazardous wastes and hazardous constituents from all RCRA-regulated facilities that treat, store, or dispose of hazardous waste or hazardous constituents.

RCRA Corrective Action, and Superfund (CERCLA, see [page __](#)), are similar programs, and follow roughly parallel procedures, to cleanup contamination. However, while Superfund generally cleans up significant contamination at abandoned sites for which responsible parties may, or may not, have been identified, RCRA Corrective Action is intended to address the release of hazardous waste or hazardous constituents at facilities which frequently are still in use. One of the objectives of RCRA Corrective Action is to prevent future Superfund sites.

RCRA Corrective Action can be carried out at any one of three (3) different types of facilities at which a release of hazardous waste or hazardous constituents has been detected:

- 1) RCRA-permitted facilities which treat, store, or dispose (TSD) of hazardous waste.
- 2) Facilities which are illegally engaged (do not have the necessary RCRA permit to be involved) in the treatment, storage, or disposal of hazardous waste. (For example, the time period during which a facility which generates hazardous waste may legally accumulate its wastes on site [without a permit] before shipping it offsite, is limited to either 90, 180, or 270 days – depending on the amount of hazardous wastes generated, and the distance to the nearest permitted disposal facility. After the allotted time period, the further on-site accumulation of hazardous waste is considered to be “storage or disposal,” and requires a permit.)
- 3) RCRA “interim status” facilities (including those that have lost their interim status). “Interim status” is an impermanent designation applied to different types of RCRA-regulated facilities. A RCRA Corrective Action can be conducted at any facility that has interim status, or that had, or should have had interim status.

The types of facilities designated as “interim status” facilities has changed slightly over time. Back when RCRA first became effective, interim status was granted (on a non-permanent basis) to those facilities which were already engaged in the activities RCRA was enacted to regulate, the on-site treatment, storage, and/or disposal of hazardous waste. Those facilities were required to comply with the requirements of interim status until such time as they either:

- A) obtained a RCRA permit (Interim status allowed those existing facilities to continue to operate while their permit applications were being reviewed.), or
- B) stopped the activities which required a RCRA permit (on-site treatment, storage, and/or disposal of hazardous wastes and hazardous constituents) and instead agreed to:
 - i) ship, ever afterward, all hazardous wastes and hazardous constituents off-site to a permitted RCRA treatment, storage, and/or disposal facility and to
 - ii) go through RCRA closure.

There are two (2) types of RCRA closure: “closure by removal” and “closure in place.” “Closure by removal” involved the complete removal of hazardous wastes and hazardous constituents from the site where such materials were previously treated or stored. “Closure in place” generally involves the on-site containment and ongoing monitoring of the site where hazardous wastes and hazardous constituents previously had been treated, stored, and/or disposed.

Now that RCRA has been in place for quite some time, the RCRA phrase “interim status facilities” also is applied to those existing facilities which suddenly become subject to new RCRA requirements. That is, when RCRA is changed to include processes, activities, or hazardous wastes or hazardous constituents which were previously not regulated by RCRA, but which now are regulated by RCRA, then

affected facilities are granted “interim status” while they make any changes needed to be in compliance with the new requirement(s).

As when RCRA first became effective, under the more current usage of the term, “interim status” still is an impermanent designation. Facilities which did not previously have a RCRA permit, but which suddenly find themselves needing a RCRA permit because of changes in RCRA regulations, still must comply with the requirements of interim status until they either:

- A) obtain a RCRA permit, or
- B) discontinue the previously unregulated activities and go through RCRA closure. They still must cease to treat, store, and/or disposal of what is now a regulated hazardous waste, and they still must undergo RCRA closure (Either “closure by removal” or “closure in place.”)

Meanwhile, when facilities which have a RCRA permit suddenly find themselves no longer in full compliance with RCRA – because of changes to RCRA which bring previously unregulated processes, activities, or hazardous wastes or hazardous constituents under RCRA regulation – they may need to either modify their existing permit, or incorporate the new RCRA requirements into their existing permit by way of provisions already drafted in the permit. For a permitted facility, the closure option could simply mean the closing of the affected waste disposal unit(s), or cell(s), not closure of the entire facility.

RCRA Corrective Actions must address releases to the air, groundwater, surface water, or soil. IDEM uses both the guidance and policy documents developed by the EPA, and the cleanup protocol developed in IDEM’s Risk-Integrated System of Closure (RISC) to carry out RCRA Correction Action measures. As mentioned previously, RCRA Corrective Action can be conducted at any RCRA-regulated facility that treats, stores, or disposes of hazardous waste or hazardous constituents and that “has, had, or should have

Sidebar:

“RISC, the Risk-Integrated System of Closure”

RISC is the framework developed by the IDEM Office of Land Quality within which OLQ can implement the laws and rules governing the cleanup of contaminated sites in Indiana. RISC represents an extensive effort on the part of IDEM staff and external stakeholders to establish consistent standards across the various existing IDEM cleanup programs, while at the same time recognizing the unique requirements of each program. For more information about RISC you can visit: <http://www.IN.gov/idem/land/risc/>, http://www.in.gov/idem/olq/risc/user_guide.html, or http://www.in.gov/idem/olq/risc/user_guide/risc_user_ch2.pdf on the IDEM website. You also may contact the OLQ at: 317/232-8997.

However, while RCRA permitting occurs within a rigid regulatory framework, RCRA Corrective Action has a minimum of regulatory requirements, and is instead designed to provide the flexibility needed to address the wide range of release scenarios and associated cleanups on a case-by-case basis. Thus, while the original corrective action process of investigation, remedy selection, and implementation (conducting the cleanup) generally comprised of six different activities, IDEM has the flexibility to use only those portions of the process which are appropriate at a given site.

The five activities which can be used during RCRA Corrective Action are:

- RCRA Facility Assessments (RFA), which are conducted by IDEM, and which identify potential or actual releases from solid waste management units (A SWMU is a unit at a facility seeking a permit where solid waste has been placed at any time, without regard for whether that unit was actually intended for the management of solid or hazardous waste at the time of placement.), and make a preliminary determination about the need for Corrective Action.
- Interim/Stabilization Measures, which ensures that short-term actions are taken to address immediate threats to human health and the environment. These measures can be taken after conducting a stabilization evaluation, which is generally completed after a RFA (above) or after an RFI (below).
- The RCRA Facility Investigation (RFI), which is similar to a Remedial Investigation under the Superfund program, compiles information to fully characterize the release in order to better determine the appropriate response action. The RFI typically focuses on the specific units, releases, and exposure pathways identified earlier in the process as being problematic. The RFI is performed by the site owner/operator, with IDEM oversight.
- The Corrective Measures Study (CMS), which identifies appropriate measures to address the release is conducted after the RFI is completed. The CMS, which also is conducted by the owner/operator with oversight from IDEM, evaluates alternative cleanup remedies after which IDEM selects the best remedy given site-specific considerations. If it is an interim status facility, IDEM will issue a Statement of Basis which lays out the required corrective measure(s). On the other hand, if it is a permitted facility, the permit may be modified by IDEM.
- The Corrective Measure Implementation (CMI), which also is carried out by the owner/operator with IDEM oversight, involves designing and conducting the cleanup remedy.

IDEM will conduct a RCRA Facility Assessment (RFA) to determine whether there may have been any past or ongoing releases of hazardous wastes or hazardous constituents which would require corrective action. RCRA Corrective Action is initiated at interim status facilities through an enforcement action, while it is initiated at permitted facilities as a requirement of the permit. IDEM or EPA can issue an administrative order or file a civil action whenever it is determined that there has been a release of hazardous waste or hazardous constituents at any facility that currently is operating under interim status, formerly operated under interim status, or that should have obtained interim status. The order or permit will include a schedule for conducting a RCRA Facility Investigation (RFI), and, if necessary, require the facility to conduct a remediation (a cleanup of hazardous wastes and constituents, by removal or stabilization) of all areas that are found to present unacceptable risks to human health or the environment. Non-cooperative facilities that refuse to enter into an Agreed Order will be issued a unilateral order, known as an Order of the Commissioner.

If the RCRA Facility Investigation (RFI) Report establishes that a release has occurred that could pose a threat to human health and the environment, and that corrective measures are necessary, the facility will have to evaluate an appropriate corrective measure. The facility may be required to submit a Corrective Measures Study (CMS) Report explaining its justification for proposing a specific remedy.

What opportunities exist for public participation in the RCRA Corrective Action Process?

After IDEM has reviewed the RFI Report and the CMS Report, IDEM will make the two (2) reports or summaries of the two (2) reports, along with a description of the proposed remedy, available for public notice. It is at this stage in the process, that you, and other members of the public, have the opportunity to participate.

The public notice, which is published in the legal section of the local newspaper will announce that a remedy has been proposed. Persons interested in reviewing the two (2) reports, or report summaries, and the facility's justification for the proposed remedy may view these documents at either the local county library, county health department, or IDEM file room. The public notice also will announce a 30-day public comment period during which you, and other members of the public, may submit written comments to IDEM regarding the reports and the proposed remedy. The notice will describe how to submit written comments, and where such comments may be sent. It also will announce that interested persons may request a public hearing, and describe how to make such a request, as well as how to obtain access to any public hearing under the Americans With Disabilities Act.

After the public comment period is over, IDEM will prepare a "Statement of Basis" for interim status facilities or modify a facility's permit, if applicable. This process is the equivalent of a Record of Decision under the Superfund (CERCLA cleanup) program. The Statement of Basis or permit modification will also include responses to all significant comments received during the public comment period. Based on the public comments it receives, IDEM will select the remedy. The cleanup option selected by IDEM as the final option will be protective of human health and the environment.

The Statement of Basis ordering corrective measure(s) at an interim status facility may not be appealed. If the facility opts not to comply with the Statement of Basis, IDEM may follow up with enforcement action.

If a corrective measure is required at a RCRA-permitted facility, then the facility's permit must be modified. If the modification is to a land disposal unit, IDEM Hazardous Waste Permits Branch has 365 days to review the permit modification application, and issue a permit. If the modification is to a hazardous waste treatment or storage facility, IDEM has 270 days to process the application and make a decision. Only the portion of the

permit which is subject to modification is reopened. When the permit is modified, there will be additional opportunities for public participation. (See page __ - __).

Just like any other hazardous waste permit modification, permit modifications to require the selected (by IDEM) corrective measure(s) may be appealed to the Indiana Office of Environmental Adjudication, ISTA Building, 150 W. Market Street, Suite 618, Indianapolis, IN 46204. Petitions to appeal must be submitted in writing within fifteen (15) days (plus 3 additional days if the petition to appeal is sent by U.S. mail) of IDEM's decision. (For more information on filing an appeal see, "What if you do not agree with IDEM's final decision? How can you file an appeal?", page __ of this guide.)

How is the RCRA Correction Action process concluded?

Because the Statement of Basis or the permit modification describes what must be done, but not how to do it, the facility must next submit a Corrective Measures Implementation (CMI) Program Plan. All the specific engineering details associated with a corrective measure(s) are developed during the CMI Program Plan review process. Generally, the final workplan will require the removal of contaminated material or the onsite isolation of the contaminants or the treatment of the contaminated media (soil or water). A final workplan also could include a combination of complete contaminant removal and onsite isolation or treatment.

A cleanup remedy that calls for onsite isolation or treatment will require an Operation and Maintenance Plan to ensure the ongoing reduction of contaminants, as well as to ensure there will be no further releases. On the other hand, a remedy that results in the removal of the contaminant may result in IDEM issuing a No Further Action letter, which essentially states that the cleanup is considered complete and that no further action is likely to be required. Additionally, remedies which rely on onsite treatment should ultimately reduce contamination to a level where IDEM could issue a No Further Action letter.

As with the State Cleanup Program, RCRA Corrective Action projects may follow the guidance found in RISC (the Risk Integrated System of Closure) a comprehensive policy which standardizes IDEM's hazardous waste and hazardous substance cleanup practices. RISC establishes the contaminant levels for groundwater and soil, at which cleanup action is required, as well as the levels at which further cleanup action is no longer required.

RCRA interim status and permitted facilities subject to RCRA Corrective Action may be eligible, on a case-by-case basis, to participate in the IDEM Voluntary Remediation Program (VRP, see page __) to carry out their RCRA Corrective Action obligations. However, such VRP participants will be subject to oversight from both VRP and RCRA Corrective Action staff. In addition, if the facility conducting corrective measure(s) opts to work within the VRP, the VRP's "covenant not to sue" does not necessarily resolve the facility's future RCRA Corrective Action liability.

The Indiana Voluntary Remediation Program:

What is the Voluntary Remediation Program, and how does it work?

The Voluntary Remediation Program (VRP), established by the state legislature in 1993, provides a mechanism for site owners, operators or potential purchasers to voluntarily enter into an agreement with IDEM to cleanup contaminated property. Since the program is voluntary, participants may elect to withdraw from it at any time. However, those who complete a site cleanup under the VRP are issued a Certificate of Completion from IDEM and a Covenant Not To Sue from the Governor's Office. These documents ensure that the owner or operator of the site will be able to proceed with re-use of the site without concern that it may be subject to further enforcement action by IDEM, or that they could be subject to further liability, at some later date. This assurance provides a strong motivation for responsible parties, or future owners, to work with IDEM to cleanup contaminated sites which may not otherwise be so readily cleaned up.

Most site owners or operators, or prospective owners or operators, who wish to clean up property that has been contaminated with petroleum or hazardous substances are potentially eligible to participate in the Voluntary Remediation Program. Only those sites at which there is a pending state or federal enforcement action regarding cleanup, or which are considered an imminent and substantial threat to human health and the environment, are not eligible. The VRP also is open to sites at which a cleanup already has been completed, if the cleanup levels meet Voluntary Remediation Program standards.

The application fee for the Voluntary Remediation Program is \$1000, and IDEM has 30 days to make an decision regarding whether an applicant is eligible to participate. Incomplete applications are returned, although applicants may resubmit a complete application.

Once an application has been accepted, the applicant must enter into a Voluntary Remediation Agreement (VRA) with IDEM that identifies the obligations of both the applicant and IDEM. Voluntary Remediation Program (VRP) participants are expected to cooperate with IDEM, and must adhere to certain standards with respect to 1) the investigation of the extent and nature of contamination, 2) the IDEM evaluation and IDEM's recommendations of remedial actions, and 3) the level of cleanup required by IDEM. The applicant also must agree to reimburse IDEM for the costs that it incurs in reviewing work plans and reports, and for oversight of the cleanup itself. IDEM will provide the applicant with an estimate of its review and oversight costs within the VRA. The VRA also sets deadlines for the completion of milestone tasks, and establishes a schedule for payments by the applicant to IDEM.

Interested citizens should be mindful that, because the program is voluntary, all applications are confidential, and are not part of the public record until IDEM and the applicant both sign the Voluntary Remediation Agreement (VRA). However, once the VRA is in effect, all information and documents related to the project become part of the public record.

After the Voluntary Remediation Agreement is signed, the applicant prepares and submits a series of work plans and reports for IDEM's review, including 1) a Phase II Investigation Report, 2) a Remediation Work Plan, and 3) a Remediation Completion Report. The "Voluntary Remediation Program 1996 Resource Guide" and the RISC ("Risk Integrated System of Closure") document contain the requirements and guidance for each of these three work plans. (For more information on RISC, see "RISC, the Risk-Integrated System of Closure," page ____.)

What are your opportunities for public participation once a facility has opted to conduct a cleanup within the Voluntary Remediation Program?

Once the Remediation Work Plan is drafted, it must be placed on public notice for 30 days. During that 30 day period, you and/or other interested parties may view the plan at the IDEM Centralized File Room. You may call the file room at 317/232-3399 or 317/232-4514 regarding Voluntary Remediation Program (VRP) files.

Sidebar:

The IDEM Centralized File Room is located in Room 1201, 100 North Senate (across the street from the Statehouse) in Indianapolis. The mailing address is:

IDEM's Centralized File Room, Room 1201
100 North Senate Avenue, PO Box 6015
Indianapolis, IN 46206-6015

The toll free number is (800) 451-6027.

VRP files for a specific cleanup project may also be viewed at the "local repository" (generally, the public library in the affected county) listed in the public notice.

The Remediation Work Plan must include a Community Relations Plan (as stated in IC 13- 25-5-7) which must itself include required activities outlined in the IDEM Office of Land Quality's non-rule policy document

(<http://www.state.in.us/idem/olq/programs/vrp/communityrelations.pdf>) on Community Relations Plans which became effective April 20, 2001.

The Community Relations Plan requires that Voluntary Remediation Program participants must:

1. Identify all adjacent property owners and property occupants.
2. Identify neighborhood organizations serving the area within which the Voluntary Remediation Project is located.
3. Identify all known or reasonably apparent sensitive community institutions within two (2) miles (including, but not limited to schools, health care facilities, child care facilities, senior citizen residential or care facilities and the administrative office or owner of parks and playgrounds).
4. Provide to IDEM a copy or sample of the written notice sent to the property owners and property occupants, neighborhood organizations, and sensitive community institutions. That notice should include a paragraph explaining the Voluntary Remediation Program, the Community Relations Plan, and the Remediation Work Plan. The written notice also

should include a phone number for the IDEM Project Manager, a short description of the work to be performed, information concerning the public comment period, and the location of the record repository (generally a library) where the Remediation Work Plan may be viewed.

5. Provide the name(s) and mailing address(es) of all affected local governmental units with jurisdiction within one (1) mile of the property affected by the proposed Remediation Work Plan. (IDEM will notify the affected local government units about the VRP Project and the anticipated remediation at the time IDEM signs the Voluntary Remediation Agreement.)
6. Provide the name(s) and mailing address(es) of the newspaper(s) or other appropriate circulars in which notice of the public comment period will be published.
7. Identify the location of the public library and other public repositories in which a copy of the proposed Remediation Work Plan will be placed for public review.
8. Post signs at all cleanup-site entry points which identify the site as a Voluntary Remediation Program cleanup site (Except that IDEM will consider, on a site-by-site basis, compelling reasons why a sign should not be posted).

To do its part to implement the Community Relations Plan, IDEM will place a copy of the Remediation Work Plan at the public library and/or other repositories, notify affected government officials, publish a notice requesting comments; and set a public comment period of at least thirty (30) days. In addition, IDEM may hold a public hearing if at least one request is made during the public comment period to hold such a hearing.

Voluntary Remediation Program participants must provide the written notice to the required parties (See #4, above) and others requesting information, before IDEM begins the public comment period for the Remediation Work Plan. Later, the participant must confirm in the VRP Completion Report that all the required parties (property owners, property occupants, neighborhood organizations, sensitive community institutions, and those requesting notification) were sent the written notice of the public comment period. The Community Relations Plan represents the minimum public notification and public participation requirements which must be met by VRP participants. IDEM encourages applicants to do everything possible, beyond the minimum requirements of the Community Relations Plan, to include the public and the community in the process.

During the thirty (30) days public notice period, all interested persons are invited to review and provide written comments regarding the Remediation Work Plan to the designated Project Manager. As previously mentioned, in addition to being available at the nearest library (repository) the Remediation Work Plan is also available on weekdays at IDEM's centralize file room, in Indianapolis.

What are the steps associated with completing a Voluntary Remediation Program cleanup?

Once IDEM has approved the Remediation Work Plan, cleanup work may begin. The site owner or operator must notify IDEM within 60 days of approval that he or she intends to proceed with implementation of the plan (some participants may not support the

recommended cleanup plan, and opt to drop out of the program). A schedule for progress reporting and operational inspections is required in the plan. Participants must submit written progress reports to IDEM, and IDEM Voluntary Remediation Program onsite staff also will oversee the cleanup. The standards for what constitutes a clean site and a completed cleanup project are based on a combination of performance and quantity standards outlined in the Voluntary Remediation Program's 1996 Resource Guide and the IDEM RISC (Risk Integrated System of Closure) document.

When the cleanup work is completed, the Voluntary Remediation Program participant will submit a Remediation Completion Report. The Completion Report contains results of sampling to confirm that cleanup criteria have been met. Final samples from the site will be tested by both IDEM and the participant to confirm that the site cleanup meets required cleanup levels. Once the cleanup has been successfully completed and payments to IDEM have been made for oversight costs, IDEM's Commissioner will issue a Certificate of Completion and the Governor's office will issue a Covenant Not To Sue. As mentioned previously, these documents provide the participant and any future land owners with an assurance that the voluntary cleanup has been performed properly and their future liability is limited.

Facilities at which a cleanup already has taken place may still participate in the Voluntary Remediation Program (VRP). However, such facilities, would have to meet the same VRP cleanup levels as other participants before a Certificate of Completion and a Covenant Not To Sue could be issued.

How is the IDEM Leaking Underground Storage Tank cleanup program implemented?

Regulated underground storage tanks are big containers placed underground to hold liquids such as petroleum products, industrial chemicals, or pesticides. IDEM closely regulates underground storage tanks because leaking tanks can easily contaminate soil and ground water. Above ground storage tanks are regulated by the state fire marshal's office.

Within twenty-four (24) hours of detecting a release from an underground storage tank, the owner and/or operator must: 1) report the release to IDEM, 2) take immediate action to prevent any further release, and 3) identify and eliminate any fire, explosion, or vapor hazards. Some of the other measures the owner/operator must take to prevent further releases into the environment, and to the extent possible, prevent further migration (movement away from the tank site) of any released material. For more information on what to do if you think your home might be affected by a leaking underground storage tank, call (317) 232-8900, or visit the IDEM website at:

http://www.in.gov/idem/olq/programs/lust/general_public.html.

The cleanup of materials released from an underground storage tank is referred to as a correction action (not to be confused with a RCRA Corrective Action, see [page 91](#)).

Within 45 days of a release from an underground storage tank, the owner/operator must submit a site characterization report to IDEM. This report must include information about where and how much contamination is found in the soil and ground water as well as an analysis of potential exposure to people or the environment. Afterward, the owner/operator must submit a corrective action plan for responding to any contamination of the soil and groundwater caused by the release. IDEM will approve the corrective action plan only after determining that it will adequately protect human health and the environment. Afterward, the owner/operator will carry out the cleanup plan, and to IDEM on their progress. The cleanup must continue until contamination is reduced to a safe level.

What are the opportunities for public participation associated with the IDEM Leaking Underground Storage Tank cleanup program?

Currently, there are about 4,000 active leaking underground storage tank sites in Indiana, and 300 to 500 more are reported each year. Because of the large number of cleanups, and the limited resources available, program rules only require that IDEM ensures notification of those members of the public who are directly affected by the release, and the planned correction action.

IDEM Leaking Underground Storage Tank Project Managers have the flexibility to determine how to best meet that notice requirement. In many instances, there may be no potentially affected persons. In instances where there is any imminent danger of exposure, and depending on the number of potentially affected persons, members of the public may be notified by personal contact by field staff, or by letters to individual households. Nonetheless, site release information and IDEM decisions concerning the corrective action plan are always available for public inspection upon request.

The IDEM Leaking Underground Storage Tank Project Manager also may hold a public meeting if there is significant public interest. If a public meeting is held, Leaking Underground Storage Tank staff generally will informally record comments and, if possible, respond directly to any questions asked at the meeting.

How is an IDEM Brownfield Environmental Assessment implemented, and what are the opportunities for public comment associated with that type of service/assistance?

“Brownfields” are under-utilized, closed, or abandoned industrial or commercial sites. Brownfields can be found in many communities throughout Indiana. Because such sites frequently are overgrown, run down, or otherwise neglected, they can project an air of decay and blight. Brownfields sometimes are also contaminated with hazardous waste or

hazardous constituents. However, even when they are not contaminated, they may be perceived as such because of their appearance, and therefore may be viewed as undesirable for re-development. This perception can be an obstacle to local governments and neighborhoods trying to redevelop blighted areas.

The State of Indiana and IDEM believe that the redevelopment of brownfields can benefit the environment, the community, industry, and commerce by:

- 1) Providing an alternative to industrial development in green, undeveloped areas outside cities,
- 2) Cleaning up contaminated properties (thereby addressing potential health risks to neighboring areas),
- 3) Recycling pre-existing structures to productive use,
- 4) Returning such abandoned properties to the tax rolls, and
- 5) Possibly creating jobs.

Because brownfield redevelopment is often blocked by the perception that abandoned industrial or commercial sites could be contaminated, IDEM may conduct an IDEM Brownfield Environmental Assessment. It provides an excellent opportunity for units of local government to determine whether a site actually is contaminated, and if so, possibly to what extent. The environmental assessment can help answer many questions regarding potential cleanup costs and environmental liability at brownfield properties. Although this service/assistance is not open to any private individuals or developers, they may apply through a unit of government. However, neither the unit of government nor the private individual/developer may submit an application for a site at which it caused the contamination.

The IDEM Brownfield Environmental Assessment is a competitive process using limited federal funds. Preference will be given to properties with a proposed end use. Properties with complete redevelopment plans or with a prospective purchaser currently under consideration will be given additional preference. Although there is no actual public notice or comment period associated with the selection by IDEM of recipients for a Brownfield Environmental Assessment, applications providing the best evidence of a true need and solid community support have the best chance of being selected. Applications are accepted for all types of sites, but IDEM's primary focus is on industrial and commercial sites. However, wetlands, sensitive environments, sites with endangered species, sites located in flood plains and sites contaminated solely by petroleum products generally will not be accepted. Selected applicants will receive a confirmation letter within two weeks of receipt of the application. A meeting will be held by IDEM with the selected applicant to explain what the site project will consist of, and to describe the respective responsibilities of each party. Although federal funds are used to pay for the Brownfield Environmental Assessments, IDEM may ask the respective unit of government to provide "in-kind" services such as surveying the property, assisting IDEM in the proper disposal of soil and groundwater generated during the assessment, and gaining access to neighboring properties.

In general, Phase I type assessment activities involve historical research of the brownfield property and a site reconnaissance to determine if a threat of contamination may exist. If

it is determined that contamination may exist, IDEM will coordinate and/or conduct Phase II type activities, which may include the collection and analysis of environmental samples (e.g., soil, sediment, groundwater, surface water, drums/non-drum containers, tanks, building materials) on-site, and possibly off-site. Contaminant migration (movement off-site) and possible exposure pathways (means by which persons may become exposed to contaminants; for example, soil, air, water, inhalation, ingestion, etc.) may be evaluated to help determine the potential risk the site may pose to human health and the environment. A Brownfield Environmental Assessment report will follow, and will, at minimum, include a site description and history, soil and geologic characteristics, site sampling results, conclusions, and cleanup recommendations, if it is determined that a cleanup is necessary.

Should the environmental assessment reveal on-site contamination, IDEM will request a meeting with the applicant to discuss funding options, removal options, cleanup standards, and whether any land use restrictions may apply to the site after cleanup is completed. In addition, IDEM may issue "Comfort Letters" to specific parties that are relieved of liability under statute or existing IDEM policy. IDEM also may issue "Site Status Letters" to parties who may still be liable for contamination, but will not be required to take further action, based on a technical analysis of information submitted to IDEM demonstrating that the site does not pose any threat. If a cleanup is required, and if the Responsible Parties are both known and cooperative, they also may participate in IDEM's Voluntary Remediation Program by conducting a cleanup prior to, or sometimes during, redevelopment in return for a Certificate of Completion and a Covenant Not To Sue (see Voluntary Remediation Program, on [page 11](#)) for the property.

In addition, there is an Environmental Remediation Revolving Loan Fund available for both the site assessment grants and low interest loans. IDEM works with the Indiana Development Finance Authority, which administers this grant/loan program. Public input and community support also are part of this grant/loan program, as letters of support and evidence of public meetings must be provided along with the grant/loan application. For more information about the public participation processes associated with Brownfield Environmental Assessments and the Environmental Remediation Revolving Loan Fund program please contact the IDEM Office of Land Management at (317)234-0235.

Part 7

What are the specific public notice requirements and opportunities for public participation for other, non-permit/non-cleanup related, activities carried out by IDEM?

- **Will you be notified if the drinking water you obtain from a public water supplier (as opposed drinking water from an onsite private well, or other private source) does not meet Safe Drinking Water Act Standards? What kind of notification can you expect?**

Despite the efforts of water suppliers (public water systems), problems with drinking water can and do occur. For example, as water suppliers test their water, they may discover that levels of certain contaminants are higher than the standards set by EPA or the state. These higher contamination levels could be due to a change in local water conditions, heavy rainstorms, or an accidental spill of a hazardous substance, or water suppliers may also fail to take one or a series of their required samples.

SIDEBAR:

A public water system means a public water supply for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The Drinking Water Branch of the IDEM Office of Water Quality (OWQ) regulates public water systems.

Examples of public water systems include 1) community systems (cities, towns, private water companies, and mobile home parks) and 2) non-community systems (campgrounds, churches, restaurants, highway rest areas, gasoline stations, schools, motels, industries, and other facilities which themselves supply water for human consumption, rather than providing drinking water by way of a connection to another public water supplier, such as a municipal water system). Public water systems must test regularly for approximately ninety (90) contaminants.

Whenever a problem with drinking water happens, the people who drink the water have a right to know what happened and what they need to do. Thus, any time a water supplier fails to meet all EPA and state standards for drinking water (including missing required samples or taking them late), that water supplier must inform the people who drink the water.

The procedures for alerting the public which must be followed by water suppliers (public water systems) when either contaminant levels are higher than the EPA standards, or when the suppliers themselves have failed to do the proper testing to determine that contaminants are at a safe level, have been in place for some time. However, during 2000, EPA revised those procedures, but Indiana has not yet completed the process of adopting the new notice procedures so they may apply to water suppliers in our state. Therefore, as of (1/2/01) there are two (2) sets of procedures; the current procedures and the pending new procedures.

The current public notice procedures for water suppliers which have violated water standard requirements by either 1) determining that contaminant levels are above safe

standards, or who 2) have failed to test in a timely manner to ensure that contaminants do not exceed safe standards, requires that they:

- 1) Notify the public by local area radio and television stations with seventy-two (72) hours of any violation,
- 2) Publish information regarding the violation in a local daily (or weekly) newspaper of general circulation as soon as possible, but no later than fourteen (14) days after the violation, and
- 3) Notify users individually by mail (with a water bill) not later than forty-five (45) days after the violation. The Commissioner of IDEM may waive this requirement if the violation has been corrected.

Although the commissioner may give public notice on behalf of the owner/operator, the owner/operator of the public water supply system remains legally responsible for providing public notice. If the violation or failure continues to exist, the water supplier must give public notice of the continuing violations at least every three (3) months so long as the violation exists.

Water suppliers (but only those public water systems which are community systems; cities, towns, private water companies, and mobile home parks) also are required to distribute an annual Consumer Confidence Report to all their customers. The report contains sampling results from the previous year, and is a great way for citizens to learn about the quality of the water they consume.

The pending new public notice procedures would require water suppliers to:

- 1) Notify the public by local area radio, television, or newspaper within twenty-four (24) hours if it is possible the violation poses a potential immediate impact on human health,
- 2) Notify the public by local media, posting, or mail within thirty (30) days if the violation does not pose an immediate risk to human health, and
- 3) Notify the public by way of an annual water quality report within one year of violations that do not have a direct impact on human health. These notices may be incorporated into the annual Consumer Confidence Report.

The public notice of violations must: 1) describe the violation and potential health effects, 2) identify who is at risk, 3) establish whether alternate water supplies need to be used, 4) describe what the water supplier is doing to correct the problem, 5) outline actions consumers could take, 6) note when the violation occurred and when the water supplier expects to have any problems resolved, 7) provide a water supplier contact person who can provide additional information, and 8) include language in the notice encouraging broader distribution of the notice.

Water suppliers that fail to provide public notice for violations may be subject to enforcement actions by IDEM. Such actions could, in turn, provide additional public notice as well as opportunities for public comment or participation.

- **What are the public notice processes associated with the Hazardous Waste Facility Siting Board?**
- **What are the public notice processes associated with reclassification of attainment/non-attainment areas for air criteria pollutants?**
- **What is the public participation process associated with Watershed Restoration Action Strategies?**

DRAFT